

Migration policymaking in Europe: the dynamics of actors and contexts in past and present

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Migration Policymaking in Europe

*The Dynamics of Actors and
Contexts in Past and Present*

GIOVANNA ZINCONI, RINUS PENNINX
& MAREN BORKERT (EDS.)



AMSTERDAM UNIVERSITY PRESS

Migration Policymaking in Europe

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*edited by Giovanna Zincone, Rinus Penninx and
Maren Borkert*

IMISCOE Research

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Table of contents

Policymaking in the field of migration and integration in Europe: An introduction <i>Maren Borkert and Rinus Penninx</i>	7
PART I POST-WAR MIGRATION COUNTRIES	
1 The case of Austria <i>Albert Kraler</i>	21
2 The case of France <i>Catherine Wihtol de Wenden</i>	61
3 The case of Germany <i>Maren Borkert and Wolfgang Bosswick</i>	95
4 The case of the Netherlands <i>María Bruquetas-Callejo, Blanca Garcés-Mascareñas, Rinus Penninx and Peter Scholten</i>	129
5 The case of Switzerland <i>Gianni D'Amato</i>	165
6 The case of the United Kingdom <i>Lucie Cerna and Almuth Wietholtz</i>	195
PART II MEDITERRANEAN MIGRATION COUNTRIES	
7 The case of Italy <i>Giovanna Zincone</i>	247
8 The case of Spain <i>María Bruquetas-Callejo, Blanca Garcés-Mascareñas, Ricard Morén-Alegret, Rinus Penninx and Eduardo Ruiz-Vieytez</i>	291

PART III EASTERN EUROPEAN COUNTRIES

9	The case of the Czech Republic	327
	<i>Marek Čaněk and Pavel Čížinský</i>	
10	The case of Poland	347
	<i>Anna Kicingier and Izabela Koryś</i>	
	Conclusion: Comparing the making of migration policies	377
	<i>Giovanna Zincone</i>	
	List of contributors	443

Policymaking in the field of migration and integration in Europe: An introduction

Maren Borkert and Rinus Penninx

International migration movements are often explained from an economic perspective. To do so, scholars may refer to the real or perceived differences in wage and employment opportunities between countries that cause ‘flows’ of labour and capital (Harris & Todaro 1970; Lee 1969; Piore 1979; Ravenstein 1885; Stark 1981, 1991; Stark & Levhari 1982). Structural forces such as unequal access to resources and power (Frank 1966; Massey 1989; Wallerstein 1974) must also be taken into account, along with migrant networks (Kritz et al. 1992; Mabogunje 1970; Portes & Böröcz 1987) and other constraining factors. When it comes to international migration, the state becomes an undeniably significant actor that may influence the push-and-pull factor balance of migration itself, as well as the process of settlement that may or may not follow it (Zolberg 1981, 1989).

In Europe, migration has been an important factor of change and development for a very long time (Bade et al. 2007; Moch 1992). In this sense, the growth of migration and immigrant communities during the last decades represents a clear continuity (although it is seldom perceived as such). But there have also been significant changes in recent times, both in term of the characteristics of migration movements themselves and of state efforts to regulate them. Let us summarise these two elements.

Changing migration patterns in Europe

The first change regards that of migration movements and their directions. Europe was predominantly a source continent for emigrants for more than a century, roughly between 1850 and 1950. This situation changed after the 1960s. Emigration decreased and immigration became dominant. Between 1985 and 2000, the European continent experienced a steep increase of resident immigrants, from an estimated 23 million in 1985 (United Nations 1998: 1) to more than 56 million or 7.7 per cent of the total European population in 2000 (IOM 2003: 29).

Apart from its scale, the geography of immigration also changed significantly. The origin of migrants in Europe up until the 1980s may, for

simplicity's sake, be grouped under three headings: a) migration with a colonial background that connected European countries to their former colonies; b) labour migration that connected European recruiting countries to a number of selected recruitment countries; and c) refugee migration that was strongly dominated by those moving from Eastern Europe to Western Europe (i.e. displaced persons after WWII and refugees from East to West during the Cold War). In terms of immigrant origins, what emerged were patterns of geography heavily dotted by migration from Europe and the Mediterranean countries, plus a limited number of colonies. Today this picture is blurred completely. Immigrants from all over the world come to Europe in significant numbers: expatriates working for multinational companies and international organisations, skilled workers such as nurses and doctors from the Philippines, refugees and asylum seekers from Africa, the Middle East and Asia, the Balkan states and former Soviet Union countries, students from China and Korea, undocumented workers from African and Asian countries – to single out some of the major immigrant categories. In some places the result is a population so heterogeneous it merits the term 'super-diversity', as coined by Vertovec (2006) to illustrate the phenomenon found in the London metropolis.

Furthermore, while formerly migration tended to be viewed predominantly as a once-off movement leading to permanent resettlement (a conception that prevailed in classic immigration countries), recent migration – helped by strongly increased transport and communication facilities – has shifted to more fluid practices of international migration in which more migrants have consecutive stays in different countries, alternate their residence between countries, etc. This leads to new practices of residence, settlement, integration and community formation. Researchers are exploring these new phenomena under the concept of transnationalism.

New structures for the regulation of migration and settlement

Things have also changed significantly over time concerning state and government efforts to influence migration and settlement patterns. In times before the nation-state was born, it was particularly cities and local authorities that had fulfilled the need to 'regulate' some aspects of admission and residence, for example by providing people a 'pass' through the territory and permission to exert a profession. From the beginning of the twentieth century, nation-states in Europe have developed national instruments in order to regulate not only admission (via controlled physical borders, passports for citizens and specialised aliens' police), but also access to the labour market and important state institutions (for the Netherlands see Lucassen 1995 and Lucassen & Penninx 1997).

The gradual evolution of nation-states into welfare states in the post-war era brought yet another change. Liberal-democratic welfare states progressively developed ever more intense relations between the state and its citizens, whose rights and protection increased. In such a situation, the case of non-citizens provoked two urgent questions. First, who can or should be admitted to the territory of the state? As Zolberg (1981, 1989: 405-6) stated:

[...] it is precisely the control which states exercise over borders that defines international migration as a distinctive social process. This arises from the irreducible political element, in that the process entails not only physical relocation, but a change of jurisdiction and membership.

Second, how can admitted 'outsiders' fit into nationally developed patterns of welfare states?

Against the background of such long-term changes in migration itself as well as its regulation, it becomes clear why policymaking in the field of migration, integration and social cohesion has become so prominent and simultaneously contested at the national, regional and local levels.

Finally, during the last ten years a significant new supra-national political institution has been developed: the European Union and its policies in the field of immigration and integration. As for immigration policies, the EU's history as the cradle of free circulation of workers and later of member state citizens *within* a growing European area goes back as far as the European Community for Coal and Steel in 1950 (Goedings 2006). However, the EU's common policies towards third-country nationals are much more recent, initiated by the Amsterdam Treaty of 1997. This agreement stipulated that in May 2004, five years after its ratification, asylum and migration should become subject to communitarian policymaking, being thus shifted from the third, intergovernmental pillar of the EU to its first pillar. In the period 1999-2004 there was indeed a harmonisation of existing policies and practices (European Commission 2000), even though most of the agreements and directives focused on restrictive policies aimed to combat illegal migration and keep potential asylum seekers at bay, as well as to synchronise asylum policies. A much smaller set of EU directives served to improve the legal position of immigrants (Groenendijk & Minderhoud 2004; Van Selm & Tsolakis 2004).

European Commission policy initiative concerning integration is dated as recent as 2003, when the first Communication on the topic was issued (European Commission 2003). EU integration policies are 'soft' third pillar policies, based on intergovernmental consensus and implemented through the open method of coordination. Collecting information, monitoring,

exchange of good practices and mobilisation of civil society actors are the most important policy instruments (Süssmuth & Weidenfeld 2005).

The study of migration policymaking and settlement of migrants

The study of migration in Europe followed the recent expansion of this migration and is thus a relatively young field. A first instance since the 1980s compelling research was when it became evident in the 1980s that the guestworkers who were recruited to sustain and expand post-war economies in North-Western Europe were in fact staying. Such research was first and foremost concentrated on numerical aspects of migration flows to European countries, on the emerging immigrant communities and their demographic composition. In a second turn, migration studies began highlighting questions concerning the integration of migrants into the economic and social spheres of the new places of settlement. In a third phase, focus fell on the political participation and integration of immigrants and their descendants in a more comprehensive sense.

Zincone and Caponio (2006) have shown that the specific analysis of migration policymaking is an even younger field of research. In this, what they call the fourth phase, scientific investigations pose the question of how immigration and integration policies are created, operationalised and implemented. This does not focus on the content or frames of these policies *per se*, but on the political process through which such policies come into existence and how their implementation is steered. Very little work has been done yet from this particular perspective: what is available is mainly grey literature in the form of PhD dissertations and research reports (Zincone & Caponio 2006).

It is from such a starting point that researchers from ten different European countries joined forces to write this first comparative study on policymaking related to migration and settlement in Europe. The initiative was undertaken by one of the research clusters of the IMISCOE Research Network, which defined its task as studying the multilevel governance of immigrant and immigration policies. This group of researchers is richly multi-disciplinary, bringing together scholars from political science, policy analysis, sociology, anthropology, geography, history and legal studies. Although based primarily on scientific traditions of political science and policy analysis, the approach taken by this group also reflects significant input from other disciplines.

Crucial to understanding the multilevel governance of migration in contemporary societies is the awareness that policymaking is a process rather than an event. This process allows for different levels where policies are made and their interconnectedness: the supra-national, the national, the regional and the local levels of cities and municipalities. It also has different

phases, such as that of policy formulation, operationalisation and instrumentalisation and actual policy implementation (Borkert 2008). If this is primarily an analytical distinction, we should add that such a process often is of a cyclical nature: after a phase of scientific or political evaluation of a policy, a new cycle of formulation, operationalisation and implementation may start.

This study investigates the multilevel governance of migration and settlement in two dimensions: at the institutional level and in terms of the actors involved at different levels. Although we have chosen – for practical purposes – countries as the primary unit for analysis and reporting, the aim was to identify how decisions are made at various levels of government and how such decisions were influenced by policymaking and action at other levels. Looking at the mechanisms of decision-making and related political struggles, we studied the various actors involved, their institutional background and strategies and how they exert their influence. In the contextualised analysis of each country case, policy fields that are somehow related to immigration and integration of immigrants are also included wherever appropriate to encourage understanding of how the policies developed.

A strategy for the comparative study of policymaking

Within Europe, the making of migration policies developed unevenly in terms of both time and place. Depending on national trajectories and experiences, such policies have also been articulated in various ways and at different points along the way. For example, countries like the United Kingdom, the Netherlands and France, needing to redefine their relations with former colonies and migrants coming from them, had to develop policies and instruments unique from countries without such flows. Alternatively, countries such as Italy and Spain that were marked by strong emigration tendencies until their recent transformation into immigration countries – nearly overnight, in many eyes – had quite a different start than North-Western European nations. Meanwhile new EU accession states, such as Poland and the Czech Republic, are forming migration policies (with an EU *acquis* in this policy domain accepted beforehand) from yet another position altogether. In the domain of integration policies, starting points and traditions across different countries are still more diverse. This is testified to the great variation in descriptive terminology for such policies: guestworker, race relations, minority, multicultural, integration, assimilation and citizenship.

As a consequence, the state of research on such policy processes also varies remarkably. This has been signalled by Zincone and Caponio (2006), who identify four major factors contributing to the variation in

research across countries: a) the timing of immigration and migrant settlement; b) the maturity of policy-oriented studies in social science; c) the participation of experts and academics in the making of policies; and d) when the country joined the EU.

In view of the divergent policymaking as well as research related to it, doing a first comparative study of policymaking in the field of migration and integration is by no means straight forward. A first requirement for the success of such a venture was to recruit contributors who were well acquainted with processes and actors of migration policymaking in specific countries and with the state of the art of related research. Existing documents in the single countries formed the primary source for these contributions. Since in many cases such sources were only partial, if not lacking completely, the authors often applied a combination of methods for their inquiry. Apart from analysis of primary sources, such as political and administrative documents, and secondary literature, such as research papers, some authors also conducted interviews with key informants to varying degrees. In many cases, identifying and interpreting sources was greatly enhanced by the authors' own personal curricula. Some have been engaged in the topic themselves – in different roles, as researchers, advisors or policymakers – thus bringing in valuable insights and insider information from such experiences. Another way of enriching the contributions was to invite several authors to collaborate on one country, thus welcoming various disciplinary backgrounds into the analysis and balancing information from 'inside' with distanced analysis from 'outside'. We were able to collect ten cases to form the core of this comparative study. These contributions reflect a state of the art, namely what is known about the policymaking process in the field of migration and integration in Austria, the Czech Republic, France, Germany, Italy, the Netherlands, Poland, Spain, Switzerland and the UK.

A second requirement for the success of the study was to, insofar as possible, enable comparison between the national case studies. A theoretical grid was thus devised to guide the teams of contributors in their data collection, analysis and reporting. A first version of a grid was devised by the IMISCOE research cluster on multi-level governance before the work even started. After the first drafts of the country reports had been written, the grid was adjusted according to discussions among the contributors.

The main elements of the grid will be recognisable for the reader as forming the structure of the ten ensuing country chapters. The first section of each chapter describes the development and composition of immigration flows and their economic and political background in the country concerned. The second section outlines the evolution of both immigration and integration policies, describing their main directions, turning points and possible interconnections.

Sections three and four are devoted to a detailed analysis of policymaking processes on migration and integration, respectively. Within each of these domains, specific sub-domains of policy are analysed if relevant for the country. For example, distinctions may be made between the development of the regulation of labour market-driven migration, secondary migration such as family reunification and formation and asylum and refugee migration. For integration, specific sub-domains rely on the framing of integration as well as specific policies. Included may be key domains like the legal and political (e.g. access to welfare state facilities, naturalisation), the socio-economic (e.g. labour market access, social security, education) and the cultural and religious. Both sections are chronologically organised, from oldest to most recent policy and legislation initiatives. In view of the countries' different histories, the period covered differs. For North-Western European countries, the analysis generally spans the whole post-war era. For Italy and Spain, it begins in the mid-1980s. For Poland and the Czech Republic, the starting point is the years immediately before EU accession. Despite such differences, however, the 1990s marked a turning point for the majority of European countries vis-à-vis how national governments approached migration matters. As a consequence, most country studies differentiate between migration policies before the 1990s and those thereafter.

Our grid also served to define the content of such historical-analytic descriptions in the third and fourth sections of each chapter. The main characteristics of decision-making in immigration and integration policies are highlighted by using three analytical foci: a) development of the institutional structures that are formally responsible for policies; b) actors and networks that concretely take part in the policymaking process (or, for that matter, do not participate); and c) internal and external factors that influence these decision-making processes.

The final section prepares a ground for comparison. Authors were asked to summarise here the specificities of their national case studies and suggest factors that could explain migration and integration policymaking that often seems to follow unpredictable, uncertain patterns. In doing so, particular attention was given to the following points:

- the relation (or absence thereof) between immigration and integration policies
- the governance patterns and networks of actors in these policy fields
- the relevance of politics, the political system and of different government coalitions
- the style of policymaking, for example, strategies of negotiation and bargaining versus opposition and conflict.

Terminology

The common grid for this study functioned as a general framework within which authors could comparably provide the phenomena we wished to observe, analyse and report on. It did not, however, anticipate the challenge of terminology. As indicated above, not only do policies and their framing differ remarkably across European countries, so too is the related terminology divergent. It is not only a matter of language. Framing and concepts behind the words have far-reaching implications for the demarcation of domains and the operational terms used in actual implementation. For example, post-independence migration by inhabitants of former colonies to the countries that were once the colonisers may not be framed or defined as 'immigration', as was the case with migrants from Indonesia to the Netherlands between 1948 and 1962. Dutch policies called this group 'repatriates', although the great majority had never been in the patria before. One of the clearest examples of divergent terminology stemming from operational definitions is to be found in the formulation and identification of policy target groups. The various figures provided for immigration and the stock of immigrants in the first section of every national case chapter are based on different criteria, such as legal status of immigrants (for foreigners), place of birth outside the country of residence (for those with first-hand migration experience), place of birth of parents (for the so-called second-generation migrants) or even self-categorisation of residents in classifications of 'ethnic origin' in censuses. This results in data that are very divergent, if not incomparable.¹

We tried to resolve this volume's competing terminology by defining a number of key terms that clearly mark the common ground covered by our comparative study. This is particularly the case with the terms 'immigration policies' and 'immigrant policies', as applied in this introductory chapter and the conclusion. On the other hand, it was decided that within the case studies, the description and analysis of the different countries was best served by using terminology traditionally used in the national context. Not doing so would render the cases incomprehensible. In this sense, the uniformity of language was abandoned to promote an unencumbered approach to the subject. As a result, the national chapters provide insights into current perceptions, discourses in member states and information about how an issue is investigated by different scientific communities. At the same time, the analysis follows broader definitions within the grid.

We use the term 'migration policies' as common shorthand for indicating both policies that relate to mobility of a certain duration across state borders and policies that relate to the settlement process of such migrants in the new place.

More specifically, we define 'immigration policies' as any policies that relate to admission, entrance and expulsion of people who used to live

outside the national territory concerned, irrespective of their legal status (e.g. foreign citizens, recognised refugees, illegal immigrants) and the title given to them (e.g. aliens, returnees, *Aussiedler*, racial minorities).

In contrast, 'immigrant policies' are defined in this volume as all policies related to immigrants and their position in the new society of settlement, irrespective of the individuals' legal status and notwithstanding the names for such policies (e.g. ethnic minorities' policies, race relations policies, integration policies, multicultural policies). To a great extent, we have followed terminology developed by Hammar (1985).

The structure of the book

The structure of the book is straightforward. This introduction is followed by ten chapters that should be read as individual case studies of policymaking. They are grouped in three clusters that represent different types of immigration experiences. The countries described in the first six chapters are all to be found in Western Europe: Austria, France, Germany, the Netherlands, Switzerland and the UK. They share a longer history of post-war immigration going back to the 1950s and 1960s. This commonality does not imply, however, that the countries have developed the same policy responses to migration. On the contrary, their responses are remarkably different, in terms of both content and timeline. And most interestingly, in view of the study's impetus, the processes of policymaking in this field are also remarkably divergent, particularly in the period before 1990.

Following the Western European cases, Italy and Spain are presented as two recent immigration countries in Southern Europe. They do not only share this background, but also the common experience of having been significant emigration countries until recently.

Finally, two countries from Central Europe are included. Migration – at least in a sense that is comparable to other Western European countries – became a viable option only after the fall of the Iron Curtain and the communist regimes in 1989. Since then, the Czech Republic and Poland have experienced a mix of migration movements from, through and into their countries, especially since their 2004 accession. Entrance into the EU has also had significant implications for policymaking processes, as we will see.

In the concluding chapter, Zincone makes up the balance of what we can learn from the ten cases. She does so by asking two basic questions to be answered on the basis of comparison. First, which forces, actors and mechanisms discourage or hinder change in policies and their making, and which ones promote, encourage or even enforce such changes? Systematic observations based on this question give us insight into how to explain continuity and change, particularly at times and in situations where other outcomes would be expected than are actually observed. The second

question is whether change, when it occurs, also leads to convergence of policies and of policymaking in different countries. This is not necessarily the case, as is shown.

Finally, Zincone calls attention to strong outside forces – those external to the mechanisms of policymaking within national contexts – that increasingly influence policies and policymaking. Sometimes such forces may press directly towards convergence, as in the case of the supra-national, i.e. international and EU-wide approaches towards migration and integration. In other cases, convergence is just one possible outcome of such pressure but, as Zincone suggests, in this era of globalisation it is often the most likely one.

Note

- 1 The United Nations (2006) has tried to present comparable data on stocks of immigrants by using – in the organisation's opinion – the best proxy: stocks of legal residents born outside the country of domicile. Such data are available for all countries within this study except for Germany, in whose case the UN counts a resident alien (i.e. non-citizen) as an immigrant. This best available comparison of the ten countries results in the following percentages of resident immigrants within a nation's total population in mid-2005: Austria: 15.1, the Czech Republic: 4.4, France: 10.7, Germany: 12.3 (aliens), Italy: 4.3, The Netherlands: 10.1, Poland: 1.8, Spain: 11.1, Switzerland 22.9 and the UK: 9.1.

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PART I

POST-WAR MIGRATION COUNTRIES

1 The case of Austria

Albert Kraler

1 Introduction

In the past two decades, Austrian migration policy as well as its making have undergone radical changes. Though once a subject dealt with mostly by small groups of experts within the administration, trade unions, labour market authorities and employers' associations, migration has moved to the centre of political debate and to the centre of government. At the same time, there have been several shifts in the institutional framework dealing with migration beginning in the late 1980s. Initial monopolisation of all migration-related issues by the Ministry of Interior has given way to a subsequent emergence of new actors and institutions in the course of the 1990s and into the new millennium.

These changes are linked to broader changes in Austria's political system as well as to changing patterns of migration and its diversification both in terms of types of migration and migrants' countries of origin. The changing geopolitical context after 1989 – the collapse of Communist regimes in Eastern Europe and the rise of migration flows from them – as well as the Yugoslav crises and their related refugee influxes have functioned as important triggering events for reforming migration policies in the 1990s. The increasing Europeanisation of migration policymaking in the past fifteen years and the EU's enlargements are additional factors shaping both the contents of migration policies as well as the way they are made in Austria.

As background to a more detailed analysis of policymaking, I will first sketch out the main features of immigration into Austria and characteristics of the immigrant populations. In the second part of this introduction, I outline the history of migration policy before the 1990s.

1.1 *Evolution of immigration and the immigrant population*

Post-war migration policies in Austria have been largely shaped by guest worker recruitment. However, what was intended as a temporary, circular form of labour migration soon developed more permanent features based on self-reproducing mechanisms (family migration, chain migration and migrant networks). Already during the initial recruitment period, a considerable share of migrants moved with or joined family members, although

they were usually admitted as workers rather than relatives. The recruitment stop in 1974 further increased family migration, in particular children of migrant workers (Kraler 2010: 70ff).

While reunification with children abated in the mid-1980s and dwindled to an insignificant level by the late 1990s, family reunification of spouses consistently increased since the 1970s, reaching almost 28 per cent of all immigrants entering between 2004 and 2008 who were residents in Austria in 2008.¹ By contrast, family formation – migration for the purpose of concluding a marriage in Austria – has rarely exceeded 10 per cent of all resident immigrants at any given period. Above all, this reflects the absence of family formation as a legal entry channel for third-country nationals.² In total, more than 53 per cent of the current immigrant population migrated for family-related reasons, making this the main source of immigration. The share of family-related migrants among Turks is highest: almost three quarters of the Turkish population have immigrated either as a child, for the purpose of family reunification or to conclude a marriage in Austria.³

Despite restrictions, labour migration continued to be an important reason for migration until the early 1990s, when new restrictions drastically reduced the opportunities. This trend reversed only with a renewed rise of labour migration in the wake of the latest EU enlargements. Changes have been twofold. Firstly, while the share of migrants immigrating to search for work has consistently been on the decline since the 1990s, the share of recruited migrants and migrants who had found a job from abroad has recently experienced a significant increase. Secondly, recruitment of migrants from other EU countries had become dominant, particularly for short-term assignments (Statistics Austria 2009c: 33ff; Gregoritsch, Kernbeiß, Prammer-Waldhör, Timar & Wagner-Pinter 2009).

Finally, about 9 per cent of the foreign-born population immigrated to Austria as refugees or asylum seekers, mostly between the mid-1980s and the late 1990s. In the Cold War period, Austria was an important country of transit and, to a lesser extent, a country of asylum, for refugees from Communist-ruled Eastern Europe. During the 1980s, however, the share of asylum seekers from other countries of origin progressively increased. Refugees from the former Yugoslavia who fled to Austria in the early 1990s constitute the single most significant refugee flow of the past two decades in quantitative terms, followed by Chechen refugees from the Russian Federation. The inflow of refugees from the former Yugoslavia coincided with a significant increase of immigration from Eastern Europe in the wake of the abolition of exit controls. After 2000, the relative share of refugees and asylum seekers decreased, reflecting both a drop in asylum-related inflows in absolute terms as well as a new peak in legal immigration.

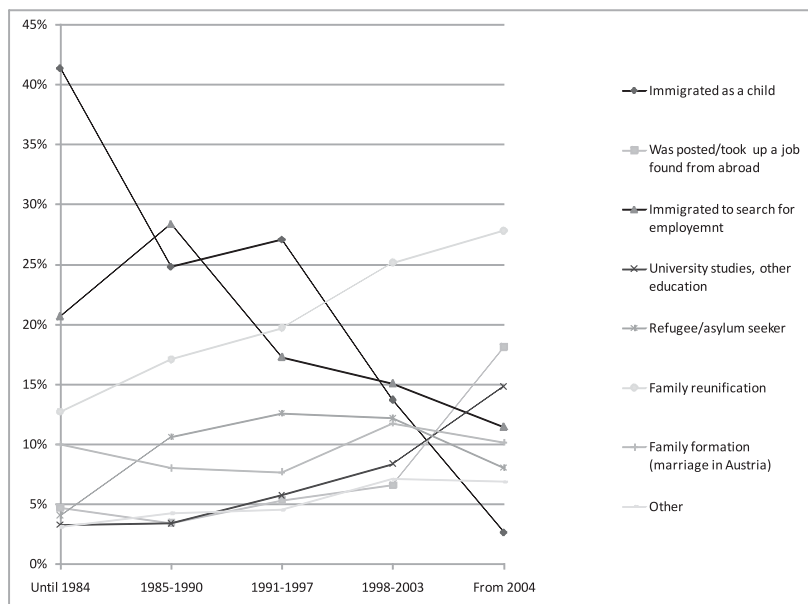
As a result, 43 per cent of refugees and asylum seekers originate from the former Yugoslavia, notably Bosnia, while some 18 per cent come from new EU member states, reflecting the legacy of the Cold War. About a

third of all refugees come from non-EU countries, the former Yugoslavia or Turkey. Thus, while the share of non-European refugees and asylum seekers has undoubtedly increased over the past two decades, the vast majority of refugees and asylum seekers has come from a European country.

As a result of these flows mainly coming from the East, the population of foreign citizenship almost doubled between 1988 and 1993, from 344,000 to an estimated 690,000. While the current composition of the migrant population still reflects guest worker recruitment, the immigrant population is increasingly diversifying as a result of 'new immigration' from other European countries, including Germany and those in Eastern Europe, as well as Africa and South-East and Central Asia.

After 1993, the foreign resident population continued to grow, but at a much lower rate. Between 1999 and 2004, there was another steep rise in immigration, with net migration climbing to two thirds of its all-time peak in 1991. After 2004, immigration decreased considerably. Between 2004 and 2006, total net migration more than halved from 50,826 in 2004 to 24,103 in 2006. As of 2009, it stood at just over 20,000. The decline is largely due to the effects of the aliens reforms package of 2006, which considerably restricted immigration of third-country nationals. However,

Figure 1.1 *Reasons for migration, over time (in %)*



Source: Author's own elaboration based on 2008 LFS ad hoc module on immigrants and their descendants in Statistics Austria (2009c)

Table 1.1 *Population of foreign citizenship, 1951-2009*

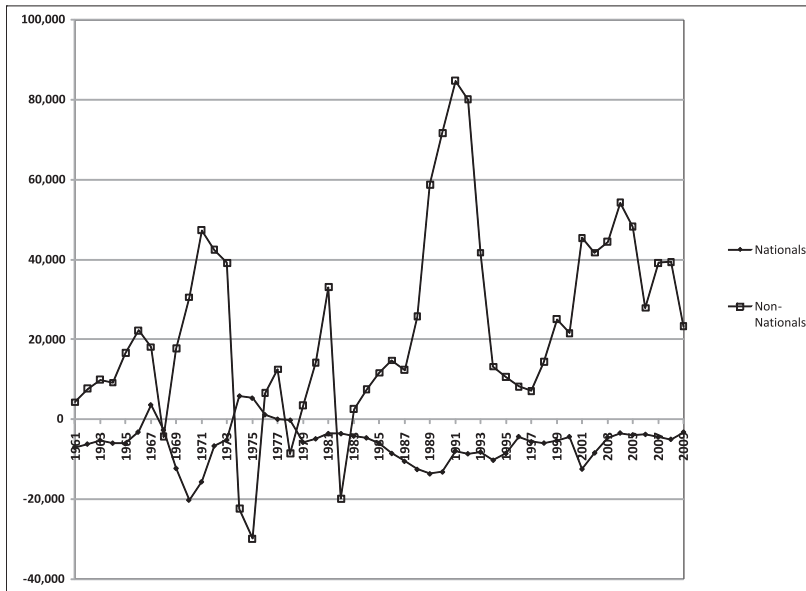
Citizenship	1951	1961	1971	1981	1991	2001	2009
Total	6,933,905	7,073,807	7,491,526	7,555,338	7,795,786	8,032,926	8,355,260
Nationals	6,611,307	6,971,648	7,279,630	7,263,890	7,278,096	7,322,000	7,484,556
Non-nationals	322,598	102,159	211,896	291,448	517,690	710,926	870,704
Share of non-nationals, %	4.7	1.4	2.8	3.9	6.6	8.9	10.4
Foreign-born	-	-	-	-	-	1,003,399	1,277,098
Share of foreign-born	-	-	-	-	-	12.5%	15.3%
Non-nationals, by citizenship							
Europe*	75,424	75,149	186,799	260,708	467,013	642,969	760,019
Bosnia-Herzegovina						108,047	84,587
Bulgaria	742	326	489	432	3,582	4,217	9,015
Czech Republic	-	-	-	-	-	7,313	9,078
Former Yugoslavia	14,948	4,565	93,337	125,890	197,886	-	-
Former Soviet Union	1,955	226	192	495	2,112	-	-
Former Czechoslovakia	4,754	741	2,991	2032	11,318	-	-
Germany	23,667	43,944	47,087	40,987	57,310	72,218	130,684
Italy	9,847	8,662	7,778	6,681	8,636	10,064	14,337
Hungary	5,985	4,956	2,691	2,526	10,556	12,729	21,527
Poland	3,705	539	774	5,911	18,321	21,841	36,879

Romania	2,798	262	397	1,253	18,336	17,470	32,341
Russian Federation	-	-	-	-	-	3,467	21,817
Turkey	112	217	16,423	59,900	118,579	127,226	110,678
Africa	29	626	1279	3,127	8,515	14,223	21,460
Asia**	294	1,630	4,254	12,304	25,677	34,978	59,538
Americas, of which	788	2,717	6,000	6,305	9,516	12,313	17,471
United States	647	2,082	4,422	4,171	5,770	6,108	7,245
Australia and Oceania	9	99	570	5,55	738	1,026	1,377
Stateless, unknown	246,054	21,938	12,994	8,449	6,231	5,417	10,839

Source: Statistics Austria (2009a, 2009b, no date a, no date b); 1951-2001 figures are census results; 2009 figures calculated according to Austrian Population Register (POPREG) data

* Including Asian areas of the USSR/Russian Federation

** Excluding Asian areas of the USSR/Russian Federation

Figure 1.2 *Net migration, 1961-2009*

Sources: Author's own elaboration based on data from Statistics Austria provided to the author and Statistics Austria (2011); 1961-1995 figures based on intercensal population estimates; 1996-2001 figures based on aggregate migration statistics derived from municipal population registers; 2002-2009 figures calculated according to Austrian Population Register (POPREG) data

current low levels undoubtedly also reflect the generally tense economic climate in the country.

Throughout the last fifteen years, net migration of *nationals* has been negative. On average, 21,143 Austrian nationals left Austria annually between 1996 and 2009, whereas just over 15,501 re-migrated, amounting to a net loss of -5,311 annually. By contrast, 80,330 non-nationals immigrated to Austria annually, while close to 50,000 emigrated, resulting in a net migration average of 31,426.

In 2009, the total foreign population was numbered at 870,704 or 10.4 per cent of the population, while 1,277,098 or 15.3 per cent of the population were foreign-born. Over 85 per cent of the foreign-born population was born in another European country. Close to 40 per cent originated from another EU country, roughly half of whom were born in a new member state. Reflecting the lasting legacies of guest worker recruitment from the former Yugoslavia and Turkey, persons born in the two countries made up a respective 12.4 per cent and 29.4 per cent of the foreign-born

population. The share of the population with a migration background – persons with two parents born abroad – was around 17.5 per cent in mid-2008 (Statistics Austria 2009b).

1.2 *Migration policies before the 1990s*

Austria's migration history in the twentieth century shows four main watersheds. The first is the break-up of the Austrian-Hungarian monarchy and the concomitant emergence of new states and new borders within its former territory. The second is World War II, which not only brought massive displacement of persons, but also led in its Cold War aftermath to Europe's split into Communist-ruled and Western states. The third commences with the recruitment of guest workers in 1961. And the final watershed took place between 1989 and 1993, marked by changing patterns of both migration and migration policymaking. It is meaningful to outline here the early evolution of migration policy since elements of its legacy are reflected in later policies.

The Habsburg Empire did not have a migration policy in the modern sense, though it had various mechanisms of controlling the movement of people within its territory. Such mechanisms were primarily concerned with documenting individual identity and regulating entitlements to different bundles of rights and related obligations. A crucial set of regulations, which did much of the regulating of movements, was the so-called *Heimatrecht* ('right of residence'), which tied every individual to his or her municipality of origin. The *Heimatrecht* was closely tied to social policy, particularly to poor relief, but also functioned as an important mechanism of population control more generally. In cases of poverty, delinquency or political activism, individuals not possessing a right to residence where they were living were liable to be deported to their community of origin. As a corollary, an elaborated set of deportation and expulsion mechanisms was erected to enforce the *Heimatrecht*. In a way, the *Heimatrecht* was a functional substitute for citizenship, gaining importance as a guiding principle for population control in the second half of the nineteenth century (Burger & Wendelin 2002).

Migration policies in a narrow sense – understood as policies that regulate the movement of both citizens and non-nationals across international borders – did not emerge until the break-up of the Habsburg Empire and the establishment of the Austrian Republic in 1918. One of its prominent starting points was 1925's adoption of the so-called Protection of Native Workers Act (*Inlandarbeiterschutzgesetz*) (Heiss 1995: 91). The act established a system of work permits for foreign citizens that has existed in varying forms ever since. Importantly, the act shifted the locus of control from the public welfare system (and municipalities as guardians of *Heimatrecht* regulations) to the labour market and labour market

authorities, thus also signalling the growing importance of the state for the regulation of employment. Reflecting its socialist origins, the act also provided for the co-option of formally organised social partners (Chamber of Labour and the Chamber of Commerce) in the administrative procedures for issuing work permits. That was an expression of the expansion of neo-corporatist modes of welfare and labour market policymaking in the First Republic. Conceptually, the Protection of Native Workers Act rested on the idea that labour markets had a limited 'absorption capacity' and thus needed to be controlled, an idea that continued to guide migration policy ever since.

During World War II and its immediate aftermath, the numbers of 'migrants' grew enormously. By and large, they were ethnic Germans who were accepted as permanent residents and, eventually, as citizens. The majority of the remaining foreign nationals were quickly repatriated, or, in the case of Jews, channelled to Israel (Albrich 1995; Fassmann & Münz 1995: 34). Throughout the first decade after the war, displaced persons (DPs) remained the focus of public debates on migration and related public policies, including citizenship policy. In tackling the 'refugee problem', the government focused on international solutions, notably resettlement, despite the fact that fairly high numbers of ethnic Germans were integrated. Indeed, resettlement remained the preferred policy until well into the 1970s.

During the 1950s, the majority of refugees came from the Communist countries surrounding Austria, in particular, Yugoslavia. However, most of them were denied refugee status and branded 'economic refugees' – a term first entering public debates on migration and asylum at that time (Sensenig 1998: 556f). Many of them were forcibly returned to Yugoslavia. Many others were resettled to third countries by the Intergovernmental Committee for European Migration (ICEM, precursor to the International Organization for Migration).

The Hungarian crisis of 1956 led to a massive inflow of some 180,000 refugees, of whom some 10 per cent stayed in Austria (Zierer 1995). The Hungarian crisis was important in giving rise to Austria's perception – and self-perception – as a welcoming 'safe haven' for refugees.⁴ In balance, however, Austria was a country of net emigration during the 1950s (Waldrauch 2003: 2).

In early 1968, Austria adopted its first asylum act. However, only a few of the total 162,000 Czechoslovakians who fled to Austria in the summer of 1968 actually applied for refugee status in Austria. As in the Hungarian crisis a decade earlier, most refugees moved on to other states, not least since recruitment agencies from other states offering higher wages actively recruited Czechoslovakian refugees. Many also returned to Czechoslovakia. Those who stayed were quickly integrated into the labour market and received nationality rather soon (Vales 1995).⁵

By the late 1950s, employers found it increasingly difficult to fill labour shortages in certain industries (Matuschek 1985: 160). Their requests to liberalise the employment of foreign labour to meet the demand, however, were initially rejected by trade unions. So employers' attempts to find a legal solution failed, but the social partners⁶ reached an agreement on the temporary employment of foreign workers in the framework of the existing regulations in 1961. The agreement set a quota of 37,120 foreign workers that could be employed in the calendar year of 1962.

Initially meant as a temporary measure, the practice of setting quotas each year in the form of agreements between employers, trade unions and the state continued in slightly modified form up to 1975. By then, the annual quota had been raised to just under 150,000. Although these official quota appear to have been never exhausted, the actual overall number of foreign employees was significantly higher, due to the fact that local branch offices of the Austrian labour market authority could issue permits outside the quota regime to migrants who were informally recruited.

This practice of informal recruitment had been reinforced by the ineffectiveness of the official recruitment system. Like other European states, Austria had turned to recruitment agreements with Mediterranean countries as a means to ensure sufficient supply of labour. In 1962, the government signed a first agreement with Spain, but it remained largely ineffective. In 1964, an agreement with Turkey followed and, in 1966, the last agreement of this kind was signed with Yugoslavia. In both countries, recruitment offices were set up, run by the Chamber of Commerce. Partly because of the relatively low wage levels prevailing in Austria at the time, however, the response to recruitment initiatives remained unsatisfactory from the point of view of employers. As a consequence, the bulk of employment permits were actually issued to migrants who either were 'chain-recruited' by employers through migrants already in Austria or who came on their own accord i.e. without the required labour-related visa – a practice that came to be known as 'tourist employment' (Gächter 2000: 69).

A law on the employment of foreign workers was finally passed in 1975 and the state – namely, the Ministry of Social Affairs, which was in charge of labour market policy) – henceforth played a much more important role. Yet the informal mechanisms of designing the main tenets of migration policy in the framework of social partnership remained in place (Gächter 2000; Matuschek 1985).

The oil crisis and the following recession in 1973 radically reduced the demand for labour. In response, labour recruitment and the more informal practices of chain recruitment and 'tourist employment' ended. Foreigners' access to employment became restricted. In 1975, the Employment of Foreign Workers Act (*Ausländerbeschäftigungsgesetz*) was passed. Apart from legalising the hitherto informal quota system, the new law entrenched employers' and labour market authorities' dominant position vis-à-vis

migrants' employment as well as the prioritisation of nationals over foreigners on the labour market. From then on, employers had to prove they could not fill vacancies with equally qualified nationals before an employment permit was issued. As a result, numbers of foreign workers, particularly those from Yugoslavia, steeply dropped, as did (albeit to a lesser extent) the number of foreign nationals resident in Austria – a phenomenon repeated after the second oil crisis in 1981. What is revealing in these events is that migration, labour or otherwise, continued to be regulated largely by controlling foreigners' access to the labour market and in the framework of an employment act rather than by adjusting entry regulations. This framework remained in place until the great changes of the early 1990s.

2 Immigration policies and policymaking since the early 1990s

The period between 1989 and 1993 was a major watershed. Three changes were key: patterns of migration, modes of migration policymaking and, last but not least, modes of migration regulation. Preceding these changes was a major change on the political scene: the politicisation of migration, related to the rise of the Freedom Party (Freiheitliche Partei Österreichs, FPÖ), the emergence of the Green Party (Die Grünen) and the 'parliamentarisation'⁷ of migration policymaking.

The immediate context in that period was a massive rise in the numbers of immigrants, refugees and asylum seekers. This was caused by increased immigration from Central and Eastern Europe after the fall of the Iron Curtain, rising numbers of asylum applications (an average of 20,800 applications submitted each year between 1988 and 1992) and a massive inflow of refugees from the territory of the disintegrating Yugoslavia.

2.1 *In search of coherence: Policymaking in the 1990s*

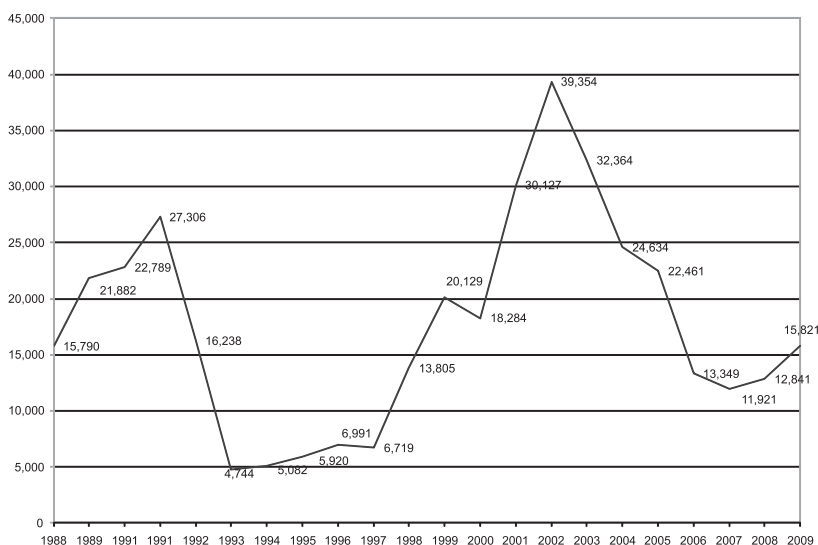
The developments in the second half of the 1980s triggered a major revision of the relevant legislation in all concerned areas during the 1990s. Whereas asylum policy and labour migration policy had been kept separate in the previous periods and admission was regulated by controlling access to the labour market, rather than through admission policy per se, migration policy was now discussed as a coherent policy field. The field included admission, the regulation of foreigners' access to employment and asylum. The guiding principle under which migration policy henceforth was discussed was that of 'managed migration' (*geregelte Zuwanderung*).

The politicisation of migration had been visible since the mid-1980s, seen in the topic's rising prominence within political debates. It was

pushed particularly by Jörg Haider's FPÖ and, to a lesser yet still significant extent, the Green Party. The FPÖ's anti-immigrant plebiscite 'Austria First' (1992) further helped make migration a key issue in political debates, also leading to the emergence of a vocal pro-immigrant advocacy coalition. This coalition, in its turn, gave rise to an unprecedented series of highly politically active NGOs that publicly commented on public policies. In addition, from 1989 onwards, the new centre-left daily broadsheet *Der Standard* acted as a forum for NGOs and government critics to voice their concerns over migration and integration policy. On the other side of the political spectrum, Austria's largest tabloid, *Die Kron*, readily served as the main arena for anti-immigrant mobilisation by the FPÖ.

Institutionally, there was a shift of competences at the governmental level. The Ministry of Interior took over the lead in formulating overall goals in migration policy from the Ministry of Social Affairs and its social partners. In 1987, then Minister of Interior Karl Blecha claimed a leading role in migration policymaking for the Ministry of Interior for the first time: a first attempt to undertake a comprehensive reform of immigration regulations, including the Employment of Foreign Workers Act. Yet the attempt failed (Fritz 2003: 304). The actual shift of competences in migration policymaking can be considerably credited to his successor, Franz Löschnak, and his chief of cabinet between 1989 and 1993, Manfred

Figure 1.3 *Asylum applications, 1988-2009*



Source: Ministry of Interior

Matzka.⁸ Löschnak (1993: 59) centralised all agendas concerning admission, policing of aliens, asylum and integration⁹ in a single ministry department soon after he took office in February 1989. He had also forged consensus among all four parties represented in Parliament: the framework for governing migration was to be completely reformed and a comprehensive policy needed to be formulated. With this move, Löschnak claimed a leading role for the Ministry of Interior.

The need to reform immigration policy, however, was seen by a much broader range of actors, including trade unions, academics and sections of the wider public. Proponents of a new law argued that existing control mechanisms (essentially, the control of access to the labour market) were ineffective. Instead, a quota system (*Quotenregelung*) that could distinguish between categories of migrants and between different purposes of stay and would set annual ceilings for the maximum intake of migrants in a particular category would allow a much more effective management and regulation of migration. This would make separate labour market controls obsolete.

Initially, however, trade unions had pushed for a major reform of the Employment of Foreign Workers Act – traditionally, the main instrument of migration policy. In their view, the legislation should be amended to better differentiate between new arrivals and foreigners already present in order to protect the latter against the former. Furthermore, they wanted more effective instruments against unregistered employment, the introduction of which were to go hand in hand with a one-shot regularisation of irregularly employed foreigners (Gächter 2000: 73-74). The actual reform of the Employment of Foreign Workers Act in 1990, however, incorporated trade unions' demands only to a limited extent. Trade unions subsequently became one of the main allies of the Ministry of Interior in its drive for a comprehensive immigration reform via a reform of immigration legislation (i.e. entry and residence regulations). In the long term, however, trade unions' support in shifting the '*locus* of control from the factory gate to the national border' (ibid.: 73) – and thus the *locus* of migration policymaking to the Ministry of Interior – actually helped undermine their power to influence migration policymaking, a fact already apparent by the 1990s.

The aliens package of 1991

The Minister of Interior announced the so-called aliens package (Fremdenpaket) in January 1991. Much of the public debate on the package, including statements by the ministry, however, focused on asylum. Immigration regulations were also closely linked to asylum, which itself became almost synonymous with irregular migration. Labour migration policy and policies towards settled immigrants hardly featured in the debate that influenced the legislation eventually adopted.

This almost exclusive focus on asylum and the mingling of asylum and wider migration issues in the public debate must be seen in light of the time's actual immigration and the public perception of it. The number of asylum applications had soared dramatically in the late 1980s, with Romanian asylum applicants being at the centre of public debate. In the public perception, asylum migration was indeed the dominant form of migration. In terms of content, the public discourse on asylum increasingly shifted the terms of the debate on general migration to security issues ('illegal migration', 'bogus-asylum seekers', trafficking and smuggling of migrants, organised crime, etc.).

A new Asylum Act was passed in 1991 (*Asylgesetz* 1991). This law introduced accelerated procedures for manifestly unfounded cases, the principle of 'safe third countries' and 'safe countries of origin' as well as the possibility to take fingerprints of asylum applicants. In the short term, the Asylum Act seemed to reach its immediate objective of reducing asylum applications: their numbers fell from 16,238 in 1992 to 4,788 in the following year.¹⁰

A year later, in 1992, the government reformed the legislation on entry and residence of foreigners, replacing the 1954 Policing of Aliens Act with the 1992 Aliens Act (*Fremdengesetz*). It also included provisions on enforcement measures (deportation, rejection at the border, etc.). Furthermore, the Residence Act (*Aufenthaltsgesetz*) was adopted in the same year, entering into force in 1993. It established a number of categories of migrants by their different purposes of stay and introduced quota for these categories. The exact category descriptions were subject to frequent changes in the following years. In addition, the law made provincial authorities responsible for issuing residence titles (up until then the Aliens Police was the competent authority). Shifting the competence of residence title issuance to the provinces soon created major problems in terms of implementation of the law, including a soaring backlog of cases and arbitrary as well as unconstitutional decisions (Jawhari 2000). The decentralisation of decision-making on residence permits was also difficult to combine with the implementation of the quota system. The fact that provinces were only poorly prepared for their new task¹¹ and that many provisions of the law were vague – leaving considerable discretion to implementing authorities – exacerbated these problems.

In response to the 1992 Residence Act's obvious challenges, Caspar Einem, who succeeded Löschnak as Minister of Interior after the general elections 1994, proposed a complete reform of the aliens legislation under the title 'integration package' (*Integrationspaket*). In a sense, this can be regarded as the birth of integration policy as a distinct policy concern at the national level and as the beginning of targeted immigrant policies.¹² Drafted as a response to the obvious adverse consequences of the 1992 reform for settled immigrants, the 'integration package' acknowledged the

need for ‘legal integration’: to grant settled immigrants rights similar, if not equal to, those of citizens. A first draft proposal was rejected by the junior party in government, the conservative People’s Party (Österreichische Volkspartei, ÖVP) (Bauböck & Perchinig 2006). In May 1996, a second draft was presented, also to be rejected by a number of conservative-led provinces, the Ministry of Labour and trade unions. Trade unions feared that automatically giving residence rights to settled immigrants after a certain time period (as proposed in the law) would infringe on the principles of the Employment of Foreign Workers Act (Gächter 2000: 75).

The 1997 Aliens Act

A new law that merged the 1992 Aliens Act with the 1992 Residence Act into a single piece of legislation eventually was adopted under Einem’s successor, Karl Schlögl, in 1997. It entered into force in 1998. This new law took up a number of elements of previous proposals and had a new focus: its central aim was to promote the integration of aliens instead of new immigration (‘integration before new immigration’). The most important novelty introduced was the principle of successive consolidation of residence after five, eight and ten years (Sohler 1999: 84ff). At the same time, new restrictions were also imposed.

The principle of ‘consolidation of residence’ – essentially a pathway to denizenship – gradually emerged from the discussions on the main tenets of the reform. It responded to the numerous, much-publicised cases of hardship under the 1992 Residence Act affecting, in particular, settled migrants and their family members. In addition, the act aimed to ‘repair’ the irregular status in which a great number of foreign children, born or raised in Austria, had found themselves – the result of the 1992 Residence Act. Firstly, a special quota for family reunion cases was introduced. While also open for spouses and children not yet reunited with the principle permit holder, it mainly served to regularise the status of minors already in Austria.¹³ Secondly, the law established an absolute right for foreign children born or raised in the country to remain in Austria (Sohler 1999: 84ff).

Proposals to harmonise immigration legislation with the Employment of Foreign Workers Act (notably by linking a long-term residence permit with access to employment, regardless of the alien’s employment history), were not pursued, as concession to the trade unions. In preparing the act, the Ministry of Interior informally consulted a wide range of experts, encouraging them to identify provisions needing to be ‘repaired’ to prevent renewed cases of hardship and, in particular, irregularity.¹⁴

Institutionally, the 1997 Aliens Act shifted part of the competence of residence title issuance back to the Aliens Police, which henceforth issued short-term residence titles (*Aufenthaltserlaubnisse*). The new Aliens Act was adopted together with an amendment of the Asylum Act, mainly to

bring it in line with EU legislation (such as the Dublin convention and the Schengen agreement).

2.2 *A new mode of governance? Right-wing coalitions, 2000-2006*

The formation of a coalition government between the conservative Austrian People's Party (ÖVP) and the populist FPÖ in early February 2000 brought a major change to Austria's political system. It meant ending a long period of grand coalitions between the two major parties, ÖVP and the Social Democrats (Sozialdemokratische Partei Österreichs, SPÖ), and also undermined the importance of the (largely informal) mechanisms of social partnership in a wide range of policy areas. In addition, FPÖ's inclusion into government provoked the imposition of – largely symbolic – sanctions against the Austrian government by the leaders of other EU-14 member states. These sanctions clearly had a major impact on government policies. Apart from leading to the resignation of Haider as FPÖ party chairman, they also greatly facilitated reaching an agreement on the compensation of World War II slave labourers and the restitution of property expropriated from Jews to their owners and heirs. Not least, the heightened external scrutiny of the government's performance, particularly in respect to human rights and minority and immigrant policy, certainly helped prevent (or at least postpone) major changes pushed for by the FPÖ (Kraler 2003; Wodak & Reisigl 2002).

The government programme of early February 2000 proposed several concrete measures on migration policy, notably on integration, some of which were subsequently adopted in the framework of the aliens legislation reform in 2002 (BKA 2000: 49ff).

The 2002 reforms and their aftermath

In July 2002, Parliament adopted significant amendments to the Aliens Act and the Asylum Law, both of which anticipated several EU directives already adopted or then still in the making.¹⁵ For example, introduced in anticipation of directive 109/2003/EC was a 'residence certificate', a title issued after five years of continuous residence and entitling unlimited employment. This finally harmonised residence rights with employment rights – such a harmonisation had been fiercely resisted by trade unions in the 1997 reform.

In general, the reform followed the line of earlier legislation, but it introduced three crucial novelties. Firstly, labour immigration of unskilled and semi-skilled workers was formally ended by abolishing the quota for employees – only a quota for highly skilled migrants with a concrete job offer (termed 'key personnel') henceforth existed – and the introduction of a minimum wage requirement for prospective migrants, initially set at € 2,016 per month.¹⁶ Secondly, as compensation, the employment of

seasonal workers was greatly facilitated. In the same vein, provinces sharing a border with a new member state were allowed to reach bilateral agreements on commuters and employees in training, thus providing a mechanism for limited recruitment and, after 2004, to selectively modify transition rules. Thirdly, under the conditions of the so-called 'integration agreement', all third-country nationals newly immigrating or those who living on Austrian territory since 1998, were obliged to sign the agreement (see section 3).

As a migration control instrument, however, the 2002 Aliens Acts (like the 1997 act preceding it) failed to reach their tacit objectives: to reduce immigration flows. Concerned about rising numbers of asylum seekers, the government introduced important amendments to the Asylum Act in 2003, including a special admission procedures and a ban on new evidence during appeal procedures. In addition, appeals against inadmissible decisions under the Dublin Convention no longer had suspensive effects. Thus, as had been the case since the early 1990s, asylum legislation was being used as a major instrument of migration control at large. In the fall of 2004, however, the Austrian Constitutional Court ruled various new provisions unconstitutional, subsequently annulling them and necessitating yet another reform (ECRE 2005).

As far as the regulation of labour migration is concerned, the 2002 act also proved unsuccessful at diminishing inflows. It rather kept the doors half closed. Admittedly, there was an attempt to restrict permanent immigration to highly skilled migrants in the 2002 reform, but temporary forms of labour migration were still permitted and even expanded. The share of temporarily admitted migrants increased continuously since the Aliens Law of 1997, with seasonal labour in agriculture and tourism accounting for the overwhelming share of temporary labour. The number of seasonal employment permits issued under the Employment of Foreign Workers Act increased more than tenfold, from 5,161 permits in 1999 to 56,500 in 2002 (Mayer 2009: 57).¹⁷ Annual quota were decided by way of decree by the Ministry of Economy and Labour.¹⁸ With the 2002 Aliens Act, the definition of seasonal labour was expanded to include economic branches where seasonal labour was uncommon, while extending the timeframe of possible employment to up to twelve months, thus essentially creating a new form of temporary (rather than seasonal) labour migration channel (Kraler & Stacher 2002: 62; Mayer 2009: 57). The newly created opportunities clearly signalled to business that their interests were heard, while also being an expression of the decline of social partnership and, in particular, the marginalisation of trade unions during the rightwing coalition government.

Actual developments of both temporary labour migration and immigration, in general, were strongly influenced by the 2004 EU enlargement that notably shifted recruitment of temporary labour from third countries to the

new EU member states. To understand this major watershed in Austrian immigration, we must return for a moment to the significance of Austria's accession to the EU in 1995. While Austrian policymakers never explicitly articulated it, Austrian policy was very similar to that of Switzerland (see D'Amato in this volume): the EU was made the main source of immigrant labour after Austria's accession, with Germany being by far the single most significant country of origin for all skill levels. EU citizens – both from new EU member states and Germany – also became the main source of seasonal labour. As a result, quota for seasonal labour were successively lowered in the past decade, notably as inflows from Eastern Germany, in particular, quickly became the main source of seasonal labour in the tourism industry. As of 2011, a new temporary labour scheme is under discussion. This scheme prioritises circular migrants – i.e. seasonal workers returning to work in Austria every year – and foresees only a very small quota for first-time seasonal migrants from third countries.¹⁹

While using labour migration from old EU member states, as described above, the Austrian government successfully lobbied – along with the Netherlands and Germany – for a long transition period for full freedom of movement of citizens of new EU member states (Mayer 2009: 62). Ultimately, only Austria and Germany maintained restrictions on freedom of movement for EU-8 citizens for the full seven-year period that lasted until May 2011. However, exemptions for specific professions were made by way of decree. Furthermore, Austria, like Germany, also negotiated restrictions on the freedom of service provision, notably for the self-employed. This was done against a backdrop of political debates in Austria before the 2004 enlargement that greatly anticipated freedom of movement's negative effects on Austria. In addition, there was a fear that citizens of new EU member states would use seasonal labour as an entry gate for permanent immigration. An unexpected coalition consisting of the right-wing FPÖ, trade unions and the Chamber of Labour demanded it be made clear that seasonal workers are not meant to be integrated into the Austrian labour market. On such arguments, legal provisions were changed to exclude seasonal migrants from unemployment benefits – from which, in theory, they should benefit because the maximum duration of a 'season' was extended to twelve months under the 2002 Aliens Law reform. At the same time, European Economic Area (EEA) citizens were to be preferentially recruited for vacancies before third-country nationals would be admitted (Mayer 2009: 60ff).

The aliens legislation package 2005

Only three years after its reform, in mid-2005, the government undertook yet another complete revision of the aliens legislation, entering into force in January 2006.²⁰ In addition, nationality law was changed later that year, bringing it in line with immigration regulations. To a large degree, the

immigration reform was necessitated by EU legislation that had to be transposed, including directives on long-term residents (2003/109/EC), on family reunion (2003/86/EC) and on freedom of movement of EU citizens and their family members (2004/38/EC). The way the directives were transposed greatly increased the diversity of Austria's legal statuses, notably in respect to family reunion. Family members who used their mobility rights under EU legislation enjoyed rights that were different – on the whole, superior – from those who had not done so (König & Perchinig 2005).

While these changes improved the legal position of some immigrants, other important and mostly restrictive changes were also introduced. The (already limited) number of purposes of stay for long-term residence permits was further reduced. Hence, regular immigration (the prerequisite for obtaining a long-term permit) only became feasible for: a) key personnel; b) persons outside employment who have a regular minimum income of € 1,300; c) family members of settled migrants (provided their quota is not already exhausted); and d) non-nationals holding a long-term permit in another EU member state. For all other purposes, short-term permits would be issued, thus excluding a sizable number of migrants from the benefits of denizenship.

Furthermore, requirements under the integration agreements were completely revised (for more details section 3). To clamp down on 'bogus marriages', residence permits must be applied for from abroad, whereas before they could, subject to certain conditions, be obtained by the spouse of an Austrian or EEA national after marriage, regardless of whether he or she was illegally present. To be eligible for family reunion, a couple's minimum net household income must be at least € 1,056 per month. In conjunction with institutional changes (through which provincial authorities are again exclusively responsible for issuing residence permits) and related difficulties in implementation, this has created considerable hardship for many bi-national couples involving asylum applicants and other irregular migrants. They can be deported despite having married an Austrian citizen.²¹ In a similar vein, civil registrars must now report marriages involving a third-country national to the Aliens Police for further investigation.

Under the new Policing of Aliens Act (policing measures were regulated in the Aliens Act between 1997-2003), aliens liable to be deported can now be held in detention for up to twelve months. That limit used to be six months.

In summary, the 2005 reform significantly increases the power and instruments of state organs to clamp down on migrants in an irregular situation, while maintaining the restrictive position towards new immigration and increasing the integration requirements demanded from new migrants.

Remarkably, unlike the 2002 reform, which was heavily rejected by both opposing parties, the Greens and the Social Democrats, the 2005 reform

was supported by the Social Democrats. Presumably, this was part of a package deal between the government and the conservative party: the former would approve the Aliens Act in exchange for the latter's concessions on the School Constitution Act, for which a qualified majority was required (Perchinig 2006).

2.3 *Governance, old style? Renewed grand coalitions since 2006*

In 2006, the second term of the centre-right coalition of the ÖVP and Alliance for the Future of Austria (Bündnis Zukunft Österreich, BZÖ)²² came to an end. General elections were held in October 2006. The Social Democrats emerged as the strongest party and, after long negotiations, formed a coalition government with the ÖVP in early 2007. Migration policy was again a major issue during the election campaign. It was pushed by Heinz Strache's FPÖ – the faction that did not join Haider's re-launched BZÖ – but also touted by the Social Democrats and the Greens.

Migration, asylum and integration featured prominently in the coalition agreement of the new government, and continued so in the second term of office after early elections were called by the ÖVP in October 2008. As with its predecessor governments, one major focus of policymaking continued to be asylum and policies on irregular migration, addressed in major amendments of aliens legislation in 2007, twice in 2009 and again in 2011. Another major focus (discussed further in section 3) was integration policy. The coalition's third – and perhaps the most significant – policy focus, which only emerged in its second term, was on labour migration. This effectively ended the 'zero immigration' policy maintained by successive previous governments and involved a major change from a quota to a points-based system for managing labour migration. These three major issues will be separately analysed in the following paragraphs.

Asylum policy and the politics of regularisation

A first step in asylum policy was late 2007's creation of the Asylum Court. Besides serving as a second-instance court, the new body was mandated to judge the compliance of asylum procedures with general administrative procedural principles, which were previously adjudicated by the Administrative Court. The expectation was that appeal procedures would be sped up, the backlog of cases at the second instance would be reduced and that Austria's Higher Court would be relieved of asylum cases. However, the new court generally did not relieve the burden of the Constitutional Court, which continued to receive a high volume of cases involving asylum seekers, partly receiving those that would prior have gone to the Administrative Court.²³ By contrast, the Asylum Court's backlog of cases had, compared to the previous second-instance tribunal,

considerably decreased, something also helped by the low in asylum applications overall.

Apart from clearing the backlog of court cases, the government's efforts also continued to focus on making asylum less accessible to what it saw as 'bogus asylum seekers' and introducing further restrictions. Thus, in another major reform of asylum legislation – again packaged in a broader reform of immigration legislation in 2009 – a residence obligation was introduced. It required asylum seekers to stay within the boundaries of a designated district, modelled after similar provisions in Germany (i.e. the *Residenzpflicht*). Moreover, 'Dublin cases' – i.e. persons alleged to have transited through another EU member state and thus obliged to submit asylum application there – were to be detained systematically.²⁴ At the time of writing, new residence restrictions have been adopted that oblige asylum seekers to remain in reception centres up to a week after submitting an asylum claim.

While the pressure on the asylum system has decreased overall thanks to lower numbers of applications as well as the partial reorganisation of asylum administration, the asylum system continues to provoke public controversies. These have notably arisen around the issue of long-term asylum seekers and rejected asylum seekers liable to be deported.

The main trigger for these debates was the widely publicised and protracted case of a family originating from Kosovo. The Zogaj family had come to Austria in the aftermath of the Kosovo crisis and had lodged an asylum claim, which was rejected in 2002. Going into appeal, the family continued to live in Austria, while the father of the family managed to find legal employment. After the family had exhausted all legal remedies and just before their scheduled deportation date in September 2007, the eldest daughter, a secondary student, went into hiding. In video messages posted on YouTube, Arigona Zogaj threatened to commit suicide if the deportation would not be suspended. The case received wide sympathetic coverage by the media, including the tabloid press. The Zogajs also received support from the municipality where they lived, the district authorities and the provincial government, which filed a humanitarian residence permit request for the family. Specifics of the Zogaj case notwithstanding, the media-powered debate and the responses from lower-level administrative authorities raised a series of issues regarding long-term resident irregular migrants, many of whom were well integrated. Furthermore, it initiated a public debate about regularisation of irregular migrants with *de facto* long-term residence in Austria.

The case itself developed into an outright saga. The Zogajs caused a public relations disaster for the Ministry of Interior, with part of the family being deported, yet ultimately re-admitted (for more details on the case see Eybl 2009). Generally, the case – and several similar less high-profile ones – fit well with Ellerman's (2006: 294) thesis that, although the public may

have a strong preference for restrictive migration policies and strict implementation of immigration controls, ‘once confronted with concrete and, by necessity, harsh policy consequences, the public will be sympathetic to calls by immigrant advocates for a more compassionate approach to enforcement’.

Politically, the Zogaj case initiated debate on the regularisation of long-term resident rejected asylum seekers and other irregular migrants and the inadequacies of regulations for granting residence on humanitarian grounds. Indeed, the case also necessitated a complete overhaul of relevant legal provisions, after a ruling of the Constitutional Court on the Zogaj case found that existing regulations for granting residence on humanitarian grounds breached the constitution: they only allowed for the ex officio granting of residence on humanitarian grounds, not upon application. The resulting reform of April 2009 introduced a right to apply for humanitarian stay. This considerably improved access to humanitarian stay, resulting in higher numbers of beneficiaries of such status. It did not, however, stop the political debate on regularisation. Nor did it apply a more consistent administrative practice to granting humanitarian stay. As a recent report by a number of NGOs vividly documents, the outcomes of humanitarian stay procedures remain highly unpredictable (Asylkoordination, Diakonie, Volkshilfe, Integrationshaus & SOS Mitmensch 2010).

From quota to a points-based system

While 1993’s establishment of the quota system was intended to regulate migration on a new basis, it proved to be an inherently limited instrument of migration management from its very inception. It covered always only a small and declining share of immigrants. Austria’s accession to the EEA in 1994 and to the EU in 1995 – implying the transposition of freedom of movement – meant that the quota requirements could not be applied to EEA or EU citizens, nor to Swiss citizens who were put on equal footing with EEA citizens under the 1993 Residence Act. Also, the initially comprehensive application of the quota system to all third-country nationals applying for or renewing residence permits proved to be impractical. Exemptions for specific categories of foreigners, such as students, were quickly incorporated into law. Thus, in 1995, children born in Austria were exempted from quota requirements, as were family members of Austrian citizens, who were exempted on constitutional grounds and would quickly become the most significant single category of third-country nationals admitted, by far exceeding family reunification with third-country national sponsors (see Kraler 2010: 79ff).

After the two most recent EU enlargements, in 2004 and 2007, the quota system became all but irrelevant. In 2007, a total of 18,398 first permits was issued to third-country nationals (excluding those for children born in Austria), but a total of 91,950 non-nationals was recorded as immigrants to

Austria. EU citizens accounted for close to 57 per cent of the total immigration of non-nationals, and third-country nationals for the remainder. Not taking into account residence and work visas for a duration of up to six months, legal temporary or permanent admission of third-country nationals thus only accounted for 20 per cent of total immigration of non-nationals and for 47 per cent of total immigration of third-country nationals. Moreover, of the 18,398 first permits issued to third-country nationals only 28.5 per cent were subject to quota restrictions, indicating the growing presence of quota-free immigration channels, such as temporary admission and family reunion with Austrian and EEA citizens. Overall, only 5.7 per cent of all immigrants recorded in 2007 immigrated under the quota restrictions.²⁵ The quota system as a mechanism of migration control was thus reduced to its symbolic policy – a function it always had, allowing successive governments to be strict on migration by maintaining previous quota levels or lowering them for particular categories of aliens.

The most elaborate proposal to revise a merely symbolic policy came from the Greens.²⁶ They forwarded the introduction of a points-based system for skilled labour migration, something which resonated with business representatives.²⁷ While the proposal by the Social Democrats²⁸ emphasised obligations of immigrants in respect to integration, and phrased immigration as a ‘privilege’ rather than a right, it too demanded a ‘pragmatic’ regulation of immigration that would meet the needs of the Austrian economy. Concretely, they proposed to establish a commission for immigration, modelled after Germany’s Süßmuth Commission (see Borkert & Bosswick this volume). Calls for a comprehensive reform also came from interest groups. Thus, in the recommendations to the new government issued by the Federation of Austrian Industries (Industriellenvereinigung, IV) shortly before the general elections of October 2006, the IV explicitly called to adopt a Canada-like model for the regulation of migration, largely following the Greens’ proposal.²⁹

The debate on a more far-reaching immigration reform regained momentum after the September 2008 elections. The coalition agreement between the Social Democrats and the ÖVP announced the introduction of a so-called red-white-red card, essentially a points-based system for labour migration to be elaborated in consultation with social partners (BKA 2008). In November 2008, the IV and the Federal Economic Chamber presented their proposal for a new framework for immigration admission. This came in the form of a joint discussion paper prepared with the assistance of IOM Austria, calling for admission for employment purposes to be more flexible and thus for Austria to become more attractive to skilled and highly skilled migrants (Industriellenvereinigung, International Organization for Migration & Wirtschaftskammer Österreich 2008). The proposal subsequently served as a basis for discussions with trade unions, the Chamber of Labour and, in turn, at the governmental level. Nevertheless, it was not

before December 2010 that a legal proposal was presented and eventually adopted in April 2011 by Parliament. Like earlier reforms, the reform was a package: apart from giving immigration regulation a completely new basis, one of the act's main novelties was requisite pre-migration language knowledge, aimed particularly at family members.

As for the regulation of immigration, the new schemes define three skill categories. They include: 1) specifically highly skilled persons with a university degree who are allowed to enter Austria to search for a job; 2) skilled workers with key qualifications particularly in need on the domestic labour market and to be defined by administrative decree and subject to a minimum gross monthly salary of € 1,786 per month; and 3) other skilled workers who need to comply with the minimum monthly gross salary currently set at € 2,520. Like skilled persons under the second category, applicants under the third need to produce a concrete job offer. All key workers are exempt from the new requirement to prove German language skills before entry, although family members of those falling under the second and third categories must comply with the integration conditions. In addition, knowledge of German before immigration earns additional points. While the points-based system was initially intended to replace the quota system completely, quotas will be maintained for family reunification, as will the three-year waiting period for migrants not belonging to any of the three skilled categories, despite protest by business and other groups (Hollomey 2011).

The impact of the new points-based system is uncertain. It will probably facilitate labour mobility at the very high end of the labour market. Yet, in terms of numerical impact, much will depend on which professions are declared by decree as being in need. In terms of policy process, the most notable element of discussions leading to the new points-based system is the degree of social partners' involvement, as their influence was marginalised during the right-wing coalition government's rule between 2000 and 2006.

3 The making of integration policies

3.1 The slow emergence of integration policies

Even though guest worker recruitment had ended with the oil crisis in 1973, migrants continued to be perceived as 'guest workers' until the major immigration law reforms of the 1990s. As a corollary, there was virtually no explicit national-level immigrant policymaking; the working assumption was that migrants would eventually return. Nevertheless, at both local and national levels specific policies did emerge. However, these remained disconnected from each other and essentially accommodated specific needs of immigrants in selected fields. Thus, in 1972 Vienna established the *Zuwanderungsfonds*, a fund to support immigrants. Its target

group comprised internal migrants from other Austrian provinces as well as guest workers. For guest workers, it was charged to ‘provide the necessary information [...] that is required [...] so foreign workers [...] can live in dignity’ (cited in Payer 2004: 11). This included legal advice in Turkish and Serbo-Croatian, support to find housing, employment-related matters – all effectively amounting to integration support for new immigrants.³⁰

At the national level, there were generally much more limited measures and initiatives. One was a major study commissioned by the Ministry of Social Affairs and Labour in 1984 (Wimmer 1986). It clearly showed that migrants were there to stay, thus putting integration on the table for the first time. In terms of legislation, an amendment to the Employment of Foreign Workers Act in 1988 gave second-generation children immediate access to a long-term work permit (*Befreiungsschein*) under certain conditions and subsequent unrestricted access to the labour market, thereby recognising the permanence of migrants’ presence in Austria (Mayer 2009: 49). However, on the whole, policies at the national level perpetuated the fiction of migrants as a temporary presence and legally excluded third-country nationals from social benefits, like welfare, as well as other rights – access to the labour market included. A telling example is the long-lasting exclusion of non-nationals (initially also including EU nationals) from participation in work councils as shop stewards or standing for office in Chamber of Labour Elections.³¹ Beyond their immediate significance, the restrictive rules governing migrants’ participation in employment-related bodies show a much broader pattern of immigrant policymaking until fairly recently, aptly paraphrased by Gächter (2000) in the same-titled book as ‘protecting indigenous workers from immigrants’. That was indeed the very rationale of the 1975 Employment of Foreign Workers Act as parliamentary debates reveal (Mayer 2009: 44ff).

So integration did not enter public debates as a major issue until the reforms of the early 1990s. Yet, when it did emerge, it was immediately linked to immigration – a tie expressed in the slogan ‘integration before new immigration’. The slogan also served to justify restrictions and exclusionary policies vis-à-vis migrants.

The immigration part – i.e. a restrictive policy – was indeed introduced in the early 1990s, but promoting integration only followed late in the decade, and it was piecemeal at that. Such measures notably focused on improving the legal status of long-term residents (König & Stadler 2003: 231). An overall integration strategy remained absent. Initial government plans in preparation of the 1992 Residence Act had foreseen formulating one in which an important task would be assigned to the Austrian Integration Fund. But this did not materialise.³²

3.2 *A shift towards language and other integration requirements*

From the second half of the 1990s, integration was increasingly debated in terms of the requirements that migrants needed to fulfil to qualify for citizenship or ‘denizenship’ (long-term residence status). A first expression of this changing philosophy of integration is found in the 1998 amendment to the nationality law in which the requisite conditions to acquire citizenship were made explicit. The commentary to the law framed citizenship as the end of a ‘successful integration process’ and thus a reward rather than a means of legal integration. According to the 1998 nationality law, applicants must show their ‘personal and professional integration’. In addition, the law stipulates a minimum-level knowledge of German as a pre-condition for acquiring Austrian citizenship (Çinar & Waldrauch 2006: 28-29). Under the same law, however, the practicalities for testing language proficiency were lenient: assessment would be carried out by the administration through a simple interview, without clear guidelines as to which level of German proficiency was required. Stronger requirements and stricter testing were to follow later. In an amendment to the law that entered into force in 2006, a formal citizenship test was introduced and the Common European Framework of Reference for Languages (CEFRL)’s A2 level was set as the minimum for German language proficiency. In the most recent reform in 2011, the minimum was raised to the B1 level.

The 1998 nationality law reform is significant in that citizenship was for the first time explicitly linked to migration and integration. Throughout the post-war period (1945-1989), citizenship policy had followed a largely internal logic in which migrants simply did not appear. In as early as the 1980s some provincial authorities responsible for implementing citizenship policy – notably Vienna – began to frame naturalisation as a tool for integrating settled migrants already and used their discretionary powers to award citizenship after a reduced waiting period. Yet, it was not until 1998 that citizenship came to be seen as part of the overall migration regime. The 2006 reform considerably strengthened that connection. It did so firstly by linking language requirements under the nationality law to the language requirements demanded from new immigrants under immigration provisions. And secondly, it made legal residence on a long-term settlement permit for at least five out of ten years of residence a prerequisite for acquiring nationality.³³

The pressure to bring nationality into the orbit of broader immigrant policymaking came from two sources: political parties and an informal forum of provincial government officials responsible for citizenship matters. In terms of the former, the FPÖ and its split-off BZÖ had long demanded restrictions on ‘premature naturalisation’ (Perchinig 2009: 31); the conservative ÖVP had also demanded nationality restrictions from the mid-1990s onwards, albeit for slightly different reasons. The latter was the main force

driving the introduction of a language requirement in the 1998 reform. The 2006 nationality reform emerged in the context of the 2005 immigration reform and was used by the BZÖ to sharpen its profile in the field of migration, while the ÖVP, hosting the Ministry of Interior, was the dominant actor. Important details for the 2006 reform, notably regarding the technical linkage of nationality and immigration laws, came from the association of civil servants responsible for nationality. This private association comprising public officials responsible for citizenship matters from all nine provinces had become an important informal arena of policymaking for nationality law (*ibid.*: 32).

As a result of the changes, naturalisations steeply dropped. Their number thus decreased by 67 per cent from 10,695 in the first quarter of 2006 to 3,700 in the first quarter of 2007 (Statistics Austria 2007).

Linking integration to admission policy: Language tests

Modelled after Dutch integration policies, language requirements were eventually also incorporated into aliens legislation in the framework of the immigration reform 2002. The so-called ‘integration agreement’ essentially obliges long-term immigrants to attend language courses and conclude them with a test. In terms of institutional responsibility, the Austrian Integration was given charge to develop curricula and to certify course providers.³⁴

Language requirements that immigrants must meet have been repeatedly upped in successive immigration reforms. Before the latest immigration law reform in 2011, migrants needed to achieve CEFRL A2 level German within five years of arrival (Perchinig 2010). Should the integration agreement not be fulfilled, immigrants may face sanctions. In actuality – and increasingly reflected in public debates – ‘integration requirements’ very much focused on family members, while key personnel were exempted; there are almost no other channels to enter the country with a long-term perspective.

The initial 2002 version of the integration agreement was largely a symbolic measure, with little effect. While 118,055 migrants were, in principle, obliged to sign the integration agreement in its first year of implementation, some 90 per cent of migrants (105,690) were exempted from the mandatory courses, mainly because they were found to possess sufficient language proficiency (ICMPD 2005b: 65). Symbolic politics also lay at the origin of the integration agreement, which was especially pushed by the FPÖ and its erstwhile parliamentary leader, Peter Westenthaler. As explained when presenting the draft law before Parliament, Westenthaler’s aim was to convey to immigrants and the wider public that ‘abuse of the social system will no longer be possible’ (cited in Mourão-Permoser 2009: 199). Public debates subsequently focused on the possibility of sanctioning non-compliant immigrants rather than on the beneficial effects of courses.

Such politicking was also important for the coalition government's leading ÖVP. For this reason, adoption of the integration agreement can be seen as a symbolic concession towards the FPÖ, which had an otherwise limited direct influence on immigration and immigrant policy – something almost exclusively crafted by the Ministry of Interior and thereby driven by the ÖVP (Kraler 2003).

A major overhaul of the integration agreement took place in the course of 2005's immigration legislation. This was the result of concerns expressed by the FPÖ and other political actors that regulations were too lenient and exempted far too many persons, in addition to a professional assessment stating that 100 hours of German language schooling was insufficient. Hours for language instruction were upped to 300 and the achievement level for German proficiency was increased from CEFRL A1 to A2 (Perchinig 2010). In addition, literacy courses for illiterate migrants were introduced. In the reform adopted in April 2011, the language level increased further, to CEFRL B1.

Finally, the 2011 reform also introduced pre-entry language requirements at the CEFRL A1 level. Even more than the post-entry integration requirements, the new pre-entry tests specifically target family members. This measure reflects longer-standing perceptions of family-related migration as being deeply problematic for integration and bringing in overwhelmingly unskilled and low-skilled persons.

Both in practice and in political rhetoric, the new pre-entry requirements are very much about women and Muslims. This follows the reform's model countries, the Netherlands and Germany. As Minister of Interior Maria Fekter put it in a newspaper interview, it is about 'the woman from the Anatolian mountain village' (cited in Hollomey 2011: 9). Tellingly, the initiative for both the enhanced language requirements for post-entry integration tests and the new pre-entry tests seem to have come largely from within the government, notably the Ministry of Interior, without any significant involvement of the two coalition parties (Hollomey 2011). Formally, however, the intention to introduce pre-entry tests was published as the 'result' of a major consultation process on integration policy. Launched in 2009, it became known as the National Action Plan for Integration (NAPI) (Austrian Integration Fund 2010; see following section).

On the whole, the pre-entry tests were introduced without much public debate. Other major changes in immigration legislation, notably controversial changes with regard to asylum policy and the introduction of the new points-based system, overshadowed the introduction of pre-entry tests.

3.3 *NAPI: Changing paradigms of integration policymaking?*

Upon renewal of the grand coalition between the Social Democrats and the ÖVP in early 2007, an important element for agreement was to elaborate a

National Action Plan for Integration (NAPI). This was to be done in consultation with relevant stakeholders, including public authorities from different ministries and levels of governments, selected NGOs and other experts (BKA 2008: 107).

The consultation process was launched in 2009. It involved a series of roundtable talks on seven themes (language and education; employment and occupation; rule of law and values; health and social affairs; intercultural dialogue; sports and leisure; housing; and the regional dimension of integration). This constituted a first attempt for a more coordinated approach to integration policymaking involving different actors. The consultation process was tightly controlled by the Ministry of Interior and, within it, the Austrian Integration Fund. The resulting plan was adopted by the Council of Ministers in January 2010. Its main outcome was defining major challenges, principle policy positions and measures for the seven thematic areas.

In many ways, the NAPI departed from established thinking on integration at the national level, which was preoccupied with language skills. While German proficiency remained an important issue within the NAPI, integration and integration policy was seen as being about much more than language. Furthermore, integration now seemed to be understood as a 'two-way process' ('two-way' was little more than a buzzword in the past). While the responsibility of the mainstream population – or, for that matter, the state – was not a particularly prominent concern in earlier debates, the NAPI underscored responsibilities held by the migrant and the host society, both. It stressed the need to provide opportunities for migrants and to counter discrimination and xenophobia. Nevertheless, the plan still emphasised the obligations of migrants, rather than those of the state or the public.

Two new bodies were created in the context of the NAPI. The Advisory Committee on Integration (Integrationsbeirat), comprising representatives of different ministries, provinces, social partners, municipalities and NGOs, emerged from the NAPI consultation process steering group. Meanwhile, the task of the Expert Committee on Integration (Expertenrat für Integration), comprising a range of experts, is to support NAPI's implementation and elaborate its recommendations (Hollomey & Wöger 2011: 8).

The NAPI did not go uncontested. NGOs as well as various municipalities and provinces – above all, Vienna – were critical of how the process was managed and its resulting action plan. Against this backdrop, in 2009, Vienna established its own commission on immigration and integration, which presented its first report in 2010. The city also promoted an Expert Committee on Integration of the Austrian Association of Cities and Towns established just prior to the NAPI process in 2008 as an alternative forum for coordinating integration activities of larger cities and municipalities (*ibid.*: 6ff).

4 The interaction of immigration and immigrant policies

This analysis has shown that, unlike other Western European countries, immigrant and immigration policy at the national level in Austria has been highly coordinated and, moreover, framed as closely linked policy fields. The reality at the local level has always been quite different, seeing various forms emerge for the pragmatic accommodation of immigrants' needs. Elaboration of specific local social policies dates back to the 1970s, but they had little, if any, impact on national policymaking. Only in the recent wake of the NAPI process have more comprehensive attempts for a coordinated approach to integration policymaking at regional and local levels been seriously considered within the overall integration strategy.

At the national level, immigrant policies have clearly been ancillary to those prior to the late 1990s. Immigrant and integration policy reflected migration policy decisions much more than it conceived or shaped them in its own right. A sharp focus on 'protecting natives from immigrants' (Gächter 2000) that shaped the nexus of immigrant and immigration policies up until the late 1990s resulted in a rather exclusionary legal framework for newcomers and settled migrants, thereby contributing to the absence of positive social policy measures for immigrants. Unlike Germany or France, where major strikes in the 1970s and social unrest in the 1980s and 1990s helped articulate immigrants' political demands and put integration (or multiculturalism) on the agenda early on, no such pressure emerged in Austria. Integration was slapped onto the political agenda only during the early 1990s' reforms, when a vocal pro-immigrant alliance comprising NGOs, the Greens, liberal media and individual public personalities on the left of the political spectrum went head to head with an equally vocal anti-immigrant alliance composed largely of the right-wing FPÖ and the tabloid press.

Integration was essentially a guiding principle used to differentiate rights across different categories of immigrants according to the perceived 'need for integration'. This, in turn, gave way to an emphasis on the obligations immigrants had. After 2000, the new focus on integration in immigration policymaking was successful in several regards. It not only framed integration as a matter of immigration policy, but also helped establish the Ministry of Interior as the leading actor in national integration policymaking. The ministry successfully claimed the coordination of integration-related matters in a wide spectrum of policy fields within the NAPI process. Concentration of both integration and immigration policymaking in the ministry helped achieve overall consistency and coherence across different policy fields.

5 External factors

As shown in this chapter's descriptive analysis, the evolution of immigration and immigrant policies, along with their changing patterns in policy-making, closely links to a number of contextual factors within Austria. These include the evolution of the Austrian political system, economic cycles, broader social changes and issues outside Austria, like political reconfigurations during and after the Cold War, changing patterns of migration and transforming international contexts of migration policymaking, such as the EU. This section focuses on the broader political context of migration policymaking within Austria, notably, the transformation of the political system since the 1980s.

For a long stretch, from the late 1950s to the early 1980s, post-war Austria's political system was characterised by remarkable stability. Although not free of conflicts, contradictions or crises, the system was dominated by the two major parties. The SPÖ-ÖVP rule reached virtually every domain of public (and sometimes even private) life. The two parties' pervasive influence was based on extensive networks of wide-ranging organisations, including associations, cooperatives and enterprises. After World War II, the parties had reached a historical compromise, which came to be reflected in their long-lasting grand coalitions, a complex system of post allocations in the public sector on the basis of party membership and their congenial arrangements of social partnership. Such arrangements helped diffuse social tensions and, in particular, prevented the emergence of more open conflicts between employers and labour.

Overall, post-war economic policy under the grand coalitions followed a Keynesian rationale. It aimed at full employment, supported by high deficit spending (on average 6.5 per cent of GDP between 1976 and 1995) (Stiefel 2006).

Throughout this period, the main principle in migration policy was that labour migration should not undermine the wider objective of full employment and the employment-based welfare regime. Originally, trade unions only agreed to the recruitment of labour because employers committed themselves to employing migrants on the same conditions as workers as far as wages and workers' rights were concerned. In turn, the state committed itself to engage in an 'active labour market policy' as a compensatory measure that would increase labour force participation of natives and hence keep demand for migrant labour to a minimum.³⁵ Because thorough employment of the native population was the primary goal of economic and labour market policy, migrant workers had to be kept 'flexible'. This was accomplished by keeping them in a legally precarious position, in order to reduce supply of migrant labour in times of recession. Because of the close linkage of migration policy and wider social and economic policy concerns, social partnership was the main arena for migration policymaking.

Social partnership essentially rested on a non-public mode of negotiation and decision-making, while migration policymaking was largely framed outside formal institutions and thus kept outside the public debate.

From the early 1980s onwards, these relatively stable arrangements of Austria's post-war political system began to erode. One major factor was the fiscal crisis emerging as the combined effect of a severe recession, the near collapse of the state-owned industrial sector, an emerging funding gap in the welfare state system and large deficit spending. Its most immediate effect was the end of 'Austrokeynesianism', an economic policy focused on full employment and an alignment of Austrian economic policies with the neo-liberal policies of other Western states (Lauber & Pesendorfer 2006: 611ff). A second major factor was the emergence of new social movements, notably, environmentalism and a host of local-level civic organisations. This contributed significantly to the more general crisis concerning the political system's legitimacy.

Nineteen eighty-six, the year when the Social Democrats and the ÖVP entered into a grand coalition, was a turning point in several respects. Firstly, the electorate had pluralised the party system: an absolute majority for either of the large parties became increasingly unlikely. Secondly, the coalition explicitly understood itself as a reform government charged to resolve the state's fiscal crisis, to reinvigorate the economy and to reform the increasingly ailing welfare state. The reform agenda entailed a series of harsh measures, including massive lay-offs in the obsolete parts of the industrial sector and budget cuts in various other domains, notably the welfare state. The reform agenda followed by the government also implied that it increasingly opted to overrule the social partners, whose overall influence thereby decreased considerably. At the same time, social partnership itself suffered a wider crisis in legitimacy. This further reduced its power to influence policies. As the influence and efficiency of social partnership declined, the role of the administration rose.

Although the reforms adopted in response to the state's financial crisis affected the population very unevenly (and in hindsight were not as radical as initially appearing), they certainly added to a general feeling of insecurity. Coupled with a series of scandals involving the two large parties' senior officials as well as the social partners, the security compounded the crisis of the political system's legitimacy as a whole. This crisis, in turn, formed fertile ground for the anti-systemic populism practised by the FPÖ after Haider had taken over its leadership in 1986. Immigration became one of the FPÖ's main campaign issues. In so doing, the party could exert considerable pressure on the government and greatly influence the kind of policies adopted (Kraler 2003).

Once in government, however, the FPÖ was far less able to capitalise on anti-immigrant sentiments or, indeed, to mobilise on that issue. After the party split in April 2005 – forming the government wing, renamed BZÖ,

and the remaining FPÖ – it was the FPÖ that proved more successful at mobilising on the basis of anti-immigration slogans.

6 Conclusions

The parliamentarisation of migration policy in the mid-1980s combined with the reconfiguration of migration policymaking in the late 1980s and early 1990s caused the disappearance of the informal, non-public decision-making mechanisms so characteristic of social partnership in post-war Austria. Henceforth, it was increasingly the political system – and its bureaucracy – that dominated the policymaking process and determined the contents of migration policies. Nevertheless, on not one of the three times that the government composition changed between 1987 and 2011 (in 1987, 2000 and 2008) were immediate changes effected in migration policy. Nor did changing electoral turnouts for the parties in governing coalitions have a noticeable effect on migration policy.

So, we have a somewhat paradoxical situation. On the one hand, immigration and integration (in 2006 and 2008 specifically) were – with few exceptions – central issues in virtually all parliamentary election campaigns. Yet on the other hand, success (or failure) of political parties in election campaigns – whether or not they mobilised on immigration issues – seemed to have very limited influence on the migration policy eventually adopted by the very same parties once in government. By all standards, continuity prevailed. To some degree, this might be a reflection of the dominant role the bureaucracy plays in framing and making migration policy. But it also can be interpreted as a reflection of a wider consensus on key principles – a consensus that to no small degree was influenced by the FPÖ's anti-immigrant populism. The most recent shift to a points-based admission system may signal a more radical change, although it keeps in place many tenets of previous policies (including a quota for family members). Effectively, it only offers a more differentiated, flexible system to admit migrants on the higher end of the skills spectrum.

This remarkable outcome may also have to do with the way immigration policy is dealt with and formulated within parties. Particularly for the two larger ones, parliamentary spokespersons for migration and/or integration issues rarely have enough clout to formulate policy positions. Their role is usually limited to defending party positions in public, though, more often, only in Parliament. Meanwhile, parties' policy positions are formulated by the leaders of their respective 'parliamentary clubs' or by the government in the first place. Thus, positions as represented by parliamentary spokespersons for migration and integration issues may differ markedly from the positions eventually pressed through by party leaders when it comes to negotiating concrete pieces of legislation. In addition, political parties

normally adopt a common position (binding for the individual MPs) before voting on a legislative proposal. This privileges mainstream positions and thus contributes to continuity in terms of the substance of policies. Such procedures also make package deals between parties a much securer undertaking than would be otherwise. The practice of ‘packaging’ immigration, asylum and integration policy reforms has further enhanced the role of parliamentary leaders, while also becoming a convenient way to manage public opinion and the wide range of stakeholders in the field.

Although the institutional set-up significantly changed in the 1990s, there are at the same time important institutional continuities and a remarkable stability in terms of the policy networks and policy communities involved. Rather than a break in, or emergence of, new actors, the 1990s are thus characterised by a reconfiguration of the institutions, networks and policy communities involved, which had an important effect on the kind of policies made.

In terms of policymaking, the EU has major significance. Its influence is both direct – via policies and directives produced by the European Commission – and indirect – through the information exchange mechanisms established at the EU level (e.g. the European Integration Network, the European Migration Network, etc.). To date, one of the most important consequences of these mechanisms is how experiences of the EU’s other major countries of immigration are taken on board in policy development at the national level. In recent years, we have seen a proliferation of transnational policy communities. It is likely that their influence on policymaking will increase in the future, especially in the EU context. Beyond their immediate relevance for learning about policy and the circulation of ideas, they also contribute to the emergence of similar networks at the national level. In turn, these new policy networks may, in the long-term, profoundly reshape the policy networks engaged in migration and integration policy.

Notes

- 1 Figures are based on the EU’s 2008 labour force surveys (LFS) ad hoc module on migrants on the labour market. Because the LFS only covers migrants resident in Austria at the time of the survey, data cannot show the actual historical composition of migration flows towards Austria, but rather, the composition of the current migrant population by reflecting migration history. In terms according to the LFS, this chapter uses ‘resident immigrants’ when referring to immigrants by their reasons for migration.
- 2 The share of marriage migrants is highest among EU nationals (more than 18 per cent); EU migrants are the only who may legally migrate for the purpose of family formation.
- 3 The source of this figure, the 2008 LFS ad hoc module on migrants on the labour market, kept the meaning of ‘reasons for migration’ deliberately open. Legally,

- Turkish marriage migrants would have been admitted either as labour migrants or through family reunification, i.e. after conclusion of the marriage.
- 4 This perception was reinforced by the influx of refugees provoked by the Czechoslovakian crisis of 1968. The reality for refugees was often less welcoming, if hospitable at all.
 - 5 The 1965 Nationality Act contained a general clause stipulating that due regard be given to convention refugees in the course of discretionary decisions on naturalisation.
 - 6 The origins of so-called 'social partnership' date back to the First Republic, upon establishment of statutory representative bodies for employees (Chamber of Labour), for employers (Chamber of Commerce, now the Austrian Federal Economic Chamber) and for agricultural employers (Chamber of Agriculture). Incorporating also the Austrian Federation of Trade Unions (Österreichischer Gewerkschaftsbund, ÖGB) and the Federation of Industries (Industriellenvereinigung, IV), these different organisations collectively came to be known as Austria's social partnership. Although formal institutions (e.g. the parity commission) were also involved, it remained largely an informal institution. Politically speaking, social partnership was a key mechanism of the country's consociationalist post-war arrangements.
 - 7 By 'parliamentarisation', I refer to two related, albeit distinct, developments: 1) a shift from informal policymaking in the context of social partnership and the related dominance of administrative decisions to formal legislative policymaking and 2) the growing importance of discussions on migration policy and general migration-related issues in parliamentary debates. As shown later in the chapter, the parliamentarisation of migration policymaking did not enhance Parliament's role in policymaking per se; rather, Parliament became an important arena in which to debate and defend migration policies.
 - 8 In 1993, Matzka subsequently became head of the Ministry of Interior's immigration and asylum division, a position he held until 1999.
 - 9 National integration policy then was explicitly limited to recognised refugees (see Löschnak 1994).
 - 10 Other measures, notably the acceptance of Bosnian war refugees outside the asylum system, also played a major role in reducing asylum figures. Asylum figures rose to their previous levels again in 1998 and 1999.
 - 11 Interview with Ministry of Interior's migration division head, March 2006.
 - 12 Within the Ministry of Interior's department of immigration and asylum, an integration department was set up back in 1989 by Löschnak. Initially, it was meant to have a broad mandate on integration policy. Yet in the wake of the Bosnian crisis and because it already administered a refugee fund, established with support from UNHCR in 1960, it came to deal only with integration of refugees. Interview with integration unit former head.
 - 13 By 2001, most minors in an irregular situation had been regularised (personal communication, August Gächter, August 2005).
 - 14 Personal communication, August Gächter, February 2006.
 - 15 Interview with Ministry of Interior's migration division head, March 2006.
 - 16 Requisite minimum wage for new immigrants is set at 60 per cent of the upper income threshold used for calculations of social security contributions. In 2006, this threshold was set at € 3,750. In order to qualify as key personnel, foreign workers thus had to earn over € 2,250 (well above the national median income) (König & Perchinig 2005: 3).
 - 17 As the contingents refer to specific positions rather than the individuals filling these conditions, the number of seasonal migrants for whom work permits were issued

- proved considerably higher than the contingents set by the decree (Kraler & Stacher 2002: 62).
- 18 Labour affairs transferred from the Ministry of Social affairs to the Ministry of Economy in 2002 under the ÖVP-FPÖ coalition government.
 - 19 'Ansturm der Deutschen: Viel Weniger Saisonniers', *Tiroler Tageszeitung* 4 February 2011.
 - 20 The reform package consists of three main components: the Asylum Act, the Settlement and Residence Act and the Aliens Police Act. In addition, it amends several other laws, including the Employment of Foreign Workers Act.
 - 21 See 'Verliebt, verlobt und abgeschoben', *Die Presse* 18 March 2006. The difficulties are compounded by the fact that under the old regulations, applicants who married a spouse from Austria or another EEA country were advised by the Aliens Police to withdraw their asylum applications in order to be eligible for a residence permit. Those doing so are now liable to be deported. Indeed, the first returns were effected.
 - 22 In April 2005, Haider re-launched the FPÖ under the name Bündnis Zukunft Österreich (BZÖ), thus effectively splitting the party into two. Although all but two old FPÖ MPs support the BZÖ, the original leftover FPÖ has much more support among the electorate.
 - 23 'Ein Jahr Asylgerichtshof: 21.000 Verfahren sind anhängig', *Der Standard* 6 September 2009.
 - 24 'Leben für Asylsuchende wird härter: Fremdenrechtspaket beschränkt Asylbewerberrechte – öfter Schubhaft als bisher', *Die Presse* 10 November 2009.
 - 25 Asylum applicants accounted for some 30 per cent of total immigration of third-country nationals. Compared to the limited number of legally admitted persons, they constituted quite a substantial inflow (author's own calculations based on BMI 2008a, 2008b; Statistics Austria 2010).
 - 26 See 'Grüne: Punktesystem statt "Deportation"', *Die Presse* 2 June 2006.
 - 27 See 'Interview: Veit Sorger: "Nicht auf den ÖGB Rücksicht nehmen"', *Die Presse* 1 July 2006.
 - 28 See 'SPÖ: Kommission soll Zuwanderung regeln', *Der Standard* 19 June 2006.
 - 29 See 'TV stellt Maßnahmenprogramm für neue Bundesregierung vor', press release, Industriellenvereinigung, 14 September 2006.
 - 30 These tasks were taken over by the Vienna Integration Funds in 1992 until it was dissolved in 2004. The Zuwanderungsfonds now solely arranges housing for new immigrants (both from within and outside Austria).
 - 31 These restrictions were abolished only in 2006.
 - 32 Interview with Ministry of Interior integration unit's former head, 29 August 2006. The Austrian Integration Fund was an entity under the Ministry of Interior, established in 1960 with the aid of UNHCR. Its original core mandate was to support the integration of recognised refugees, with the intention to expand to legal migrants. However, the outbreak of war in Yugoslavia and the sudden influx of tens of thousands of Bosnian war refugees meant that resources had to be rechanneled to refugees. Plans for a more comprehensive and proactive national integration strategy led by the Ministry of Interior were therefore also abandoned.
 - 33 Before the reform, the minimum waiting period to be eligible for naturalisation was defined in years of residence and did not require a particular permit.
 - 34 Its new mandate allowed the fund to expand its competences and increase its weight as an integration policymaking institution. Over the last decade, the fund has become an important government think tank, playing an increasingly important role in regard to knowledge production on integration.
 - 35 Interview with Josef Wallner, head of the labour market policy division of the Chamber of Labour, Vienna, 22 July 2005.

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2 The case of France

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1 Introduction

France has been an immigration country for a long time. Always having hesitated between a policy of settlement and a labour force policy, it has had a highly specific policymaking path.

During the second half of the nineteenth century, a shortage of labour and prospective future soldiers prompted a call for foreign workers. The objective was to enhance the population and development of France, despite the public debates were focusing on the risks immigration posed to French identity. Issues related to immigration were treated in a rather pragmatic manner, with no coherent policy. They were dealt with in a very concrete way by employers and civil society organisations. A turning point occurred in 1974 when France decided to cease recruitment of a salaried labour force. Initially, this decision was meant to be temporary. It resulted in putting a stop to the mobility of foreigners between France and their country of origin and in defining a policy of integration that was led by the state but also involved various partners, such as municipalities and associations. In the 1980s, and especially with the rise of Jean-Marie Le Pen in 1983's local elections, immigration and integration became highly politicised. This happened relatively early in comparison with other countries. Immigration, once a matter of low politics, had become a matter of high politics – dealt with in genuine political debates. As Europe became a new actor in immigration policy and intellectuals got more and more involved, the debate on immigration took on a new scale. It led to the development of symbolic politics and short-term policies, along with growing gaps between the actual new immigration, various modes of living together and control policy. The revival of republican values, largely forgotten during Les Trente Glorieuses (the 30 so-called 'glorious' years between 1945 and 1974), also helped set the tone for how immigration matters would be framed.

When examining France's policymaking process, we must distinguish between immigration, policies of flows, integration and policies of stocks. Admittedly, these are sometimes linked. 'Illegal migrants are an obstacle to those who are here' is a slogan frequently used in political discourses to link the matters. Remarkably, there has been more political controversy

between the political left and the right about the control of flows (i.e. immigration) than about the management of stocks (i.e. integration). Unlike what can be observed in other European countries, there is a heated debate between France's left and right regarding national border control policy, while public opinion and political parties agree rather consensually on the French republican model of integration. This is all the more remarkable in view of the fact that decisions concerning immigration are significantly influenced by EU policies, whereas France has full sovereignty on integration issues.

France is, as Dominique Schnapper (1996: 42) put it, '*un pays d'immigration qui s'ignore*' ('an immigration country that ignores the fact that it is one'). Although the state has always tried to elaborate an immigration policy, it has never fully succeeded to implement one. For the last 50 years, an ongoing debate has questioned whether France has even had an immigration and integration policy. While some historians, such as Patrick Weil (1995) and Gérard Noiriel (1987), stress the existence of long-term policies, others like lawyer Danièle Lochak (2006) and political scientist Alexis Spire (2005) underscore France's bureaucracy and short-term decision-making processes (see also Schnapper 1996; Tapinos 1975; Vasta & Vuddamalay 2006; Wihtol de Wenden 1988, 2002). With these varying interpretations in mind, this chapter analyses the driving forces behind immigration and integration policymaking in France.

1.1 *Development and composition of immigration flows*

During the period 1980–2008, immigration figures were rather stable. The number of newcomers (150,000 per year; 167,000 in 2008) was equivalent to the number who acquired French nationality (*Français par acquisition*) through regular naturalisation, marriage, acquisition of French citizenship at age eighteen by second-generation children born in France and reintegration by citizens of former colonies or French Overseas Departments and Territories (again, 150,000 each year; 137,000 in 2008). From 1982 onwards, figures of foreigners living in France were also stable: between 3.5 million foreigners and 4.5 million immigrants (6 per cent of the total population).¹ The distinction between foreigners and immigrants was introduced in the French census of 1999. The 'foreigner' category comprises those who do not hold French nationality; the 'immigrant' category comprises those who were born abroad, irrespective whether they acquired French citizenship or not.

As illustrated in Table 2.1, the composition of the immigrant population in France has shifted over time. Census data show that from 1975 onwards, European immigrants (Italians, Portuguese, Spaniards and Yugoslavs) ceased to be the majority, while the number of non-European immigrants increased. Maghrebians (with a strong rise in the number of Moroccans,

Table 2.1 *Foreigners in France according to the 1982, 1990 and 1999 censuses*

<i>Nationality</i>	<i>1982 census</i>	<i>1990 census</i>	<i>1999 census</i>
Portuguese	767,300	649,700	553,700
Moroccan	442,300	572,700	504,100
Algerian	805,100	614,200	477,500
Turkish	122,300	197,700	208,000
Italian	340,300	252,800	201,700
Spanish	327,200	216,000	161,800
Tunisian	190,800	206,300	114,400

Sources: French population censuses 1982, 1990 and 1999

Tunisians and Algerians), Turkish, South Saharan Africans and Asians became increasingly represented. This shift was due to several factors.

- Family reunification: the end of labour immigration gave way to family reunification among those who come and go between France and the southern rim of the Mediterranean Sea. Many immigrants who were moving in and out settled permanently with their families. Family reunification is also the primary reason for migration among Africans (more than 50 per cent of entries in 2008).
- Rise of asylum: France used to grant asylum to some 25,000 asylum seekers each year. In the 2000s, with over 100,000 annual applications for asylum, France became Europe's leading country of asylum. This was due partly to asylum flows coming from French-speaking African countries where civil wars had broken out (e.g. the Great Lakes refugee crisis in former Zaire, now the Democratic Republic of Congo; the 1995 Algerian crisis). It was also partly due to transnational networks using asylum as a means for access, when all other opportunities for entering the country were closed off (as in the case of Romanians and Chinese). Today, total figures of asylum applications have fallen, reaching less than 50,000 per year. In 2009, France received 42,000 asylum seekers. As for procedures of asylum applications, 85 per cent are refused refugee status at the first stage of the procedure and 70 per cent after the second stage (Cour Nationale du Droit d'Asile). This restrictive policy has produced a large part of irregular migration in France. The number of departures is rather stable, at an estimated 40,000 per year, including repatriations (25,000 in 2005; 27,000 in 2008).
- Rise of immigrants with a permanent residence status: since 1999, permanent immigrants have increased by 10 per cent annually. Each year, 150,000 foreigners enter the country with the aim of permanent immigration. Of them, 125,000 come from outside the EU, and 30,000 come from a European country. Sixty-three per cent of entries originate from Africa (Maghreb and sub-Saharan countries), and 18 per cent from Asia. There has been an increase in the number of permanent workers coming from South-East Asia, India and Poland. In 2008, 64 per cent

came from Africa, 38 per cent from North Africa, 19 per cent from Asia and 7.5 per cent from EU countries.

- Temporary and seasonal immigration: this group comprises seasonal workers who stay, at most, nine months, as well as asylum seekers and students. While the number of students decreased in 2007 (43,000), it has increased since 2008 (49,000). Furthermore, there has been an increase in the number of seasonal workers, most of whom are Moroccans and Poles, working in the agriculture sector.
- The presence of illegals: an estimated 300,000 illegal immigrants live in France presently. They include tourists who overstayed their visas, refused refugees (or asylum seekers whose applications were rejected), women, unaccompanied minors and young men looking to find employment in Europe. A few of them have crossed the Mediterranean Sea as a way of illegal entrance.

Another shift in the composition of the population, not shown in the table, is the increased feminisation of immigration, mostly among Portuguese, Moroccans, Algerians and Spaniards, who together comprise 50 per cent of all foreigners.

The 1999 census was the last one that counted the whole population through a questionnaire. Since 2004, data are provided on a 14,000-person sample each year.

1.2 *Crucial events and main turning points*

French immigration policy has been marked by several crucial events and turning points, showing the importance not only of state action, but also of non-state actors. In 1932, when three million foreigners were living in France, the renowned migration specialist and geographer Georges Mauco published *Les étrangers en France*. Besides writing about foreigners and their role in the French economy, the author put forward a hierarchical approach to nationalities and, in later writings, expressed ideas that were taken over by the Vichy Government. His approach was inspired by the crisis of the early 1930s, when the French government facing economic disaster decided to end immigration in 1932. At that time, immigration was dominated by Italians (Lucassen 2005), Poles, colonial labourers from Algeria, Belgian workers and refugees from Russia, Armenians from Turkey, immigrants from Central Europe, Germany and, in 1939, Spain. Ironically, as France was refusing further immigration in 1932 from all European countries, it was also celebrating its powerful colonial empire and the diversity of people living in it. This was done most visibly at the 1931 colonial exhibition in Paris.

After World War II, France tried to define an immigration policy known as the Ordinance of 1945, which was coupled with a reform of the

nationality law. The objective of these changes was to introduce a more selective immigration policy as well as a policy on population through the reform of the nationality act. However, this policy failed due to scarce labour and pressure by employers who managed to impose their own will on political decision-makers (Tapinos 1975).

Another pivotal year was 1974, more memorable for unintended consequences of policymaking than the non-implementation of existing legislation. Like other European countries, France was compelled by several reasons – the oil crisis, rising unemployment and Marseilles' xenophobic riots in 1973 – to opt for a recruitment ban on foreign labour. Sooner than in other European countries, the ban resulted in significant settlement by families (and the build-up of a second generation) as well as in illegal immigrants working in sectors where (contrary to all expectations) foreigners were not replaced by French workers.

A more recent turning point in the history of French immigration policymaking was then Home Minister Nicolas Sarkozy's 2006 decision to lift the general recruitment ban on all salaried workers. To remain competitive in the global competition for the highly skilled (Freeman 2004) and to face the shortage of manual labour, the immigration law of 24 July 2006 introduced the notion of *immigration choisie* ('selective migration') as opposed to *immigration subie* ('unasked-for migration'). 'Yes to chosen immigration, no to unasked-for immigration' went the slogan. The law foresaw the creation of the Carte d'Entrée et de Séjour Compétences et Talents, a residence card meant to facilitate the entrance of skilled migrants as well as seasonal workers and students on a yearly basis. It reopened salaried work to foreigners, a right that had been denied since 1974. However, the effectiveness of the law was mostly symbolic, only opening borders to some thousands of newcomers while at the same time strongly reducing opportunities for family reunification and asylum.

The chronology of integration policymaking is distinct from the chronology of immigration. The history of integration policymaking is usually taken as starting in 1974, when the State Secretary for Immigration Paul Dijoud launched a new immigration policy based on the term 'integration' instead of the formerly preferred 'assimilation'. The semantic change was complemented by the introduction of measures aimed at preserving cultures of origin, a rather unusual approach in France. Social rights were also extended to migrants and, in the 1980s, they also gained and acquired more political rights. The right to associate, for example, was extended to foreigners in 1981. In 1983, strikes in the car industry and at collective housing for foreigners, known as foyers, put forward claims for Islam to be accommodated in the foyers, in business firms and in cemeteries.² Although new actors and migrants clearly influenced French integration policies, a blindness towards ethnic and religious difference also impacted such policies. This ideology provided fertile ground for a new policy that

was introduced in 1990, aiming to give special support to urban regions particularly struck by unemployment, poverty and social exclusion. Immigrants who were concentrated in these areas became one of the target groups of this new urban policy (*Politique de la ville*, as it was called), without explicitly mentioning them as such.

Another turning point for integration, which more directly addressed immigrants, was the 1993 reform of the nationality act. For the first time in French history, the Pasqua Méhaignerie Law restricted access to French citizenship on the basis of *jus soli*. As analysed by Hagedorn (2001a, 2001b), these and further changes in French nationality law were not a result of the French model of republican integration (or assimilation), but rather the result of frequent political confrontations between the left and the right. Each time either side won an election, changes were introduced in the nationality act in order to signify the scope of the political change. Although the nationality act underwent further changes since 1993, the initial restriction of *jus soli* was never totally abolished.

Integration policy's turning point in 1990, which led to the new urban policies was not the result of a deliberate decision by the French state. Rather, it was a reaction to the violent protests of young second-generation immigrants in the suburbs of France's big cities. The riots attracted global attention to their difficult living situation, and this forced the French government to introduce a bundle of measures directed towards the *banlieues*.

Following this overview of the main turning points in immigration and integration policymaking, the following section turns to the evolution of migration policy and the main policymaking paths in France. The second section analyses integration, nationality and multiculturalism in the country. The chapter will conclude by focusing on the specificities of the so-called 'French exception' in the management of immigration and integration.

2 The evolution of immigration policy

Since the mid-nineteenth century, demographic and economic pressure, among other sometimes contradictory forces, has forced France to come to terms with immigration. French immigration policy has been characterised by swings between polarities: opening versus closing borders, a culturally assimilative approach versus one giving room to collective identities and immigration for settlement versus temporary work-related migration. Looking back at the history of immigration control, it seems that the state has always tried to exert control although it never has fully succeeded in doing so. It took a long time for France to acknowledge that it was the greatest immigration country in Europe between 1880 and 1970; once this was acknowledged, controversies unfolded between the state, employers,

public opinion and various political forces, from nationalists to liberals, from the right to the left. In France, national identity has never been defined through immigration, as is the case in classic immigration countries. This is because French national identity was built upon the myth of an ethnically homogeneous population, as well as ideas of 'social contract' and the 'political community of citizens' (though it should be noted that the recent debate on national identity launched by Minister of Immigration Eric Besson tried to link identity with immigration and Islam). Newcomers were considered individuals who had to disappear into the pre-defined political model by renouncing their own attributes – cultural, religious or otherwise – in the public sphere.

Before World War II, immigration was mostly ruled by employers in the great industries (mines, metallurgy, iron and steel), while the state only played a weak role in migration management. In 1900, there were approximately one million foreigners living in France who largely originated from neighbouring countries: Germans, Belgians and Italians from the north. There were relatively few from North Africa and Indo-China. They worked in business firms in the housing and public sectors. Competition with French workers gave rise to many riots (such as in Aigues-Mortes in the late nineteenth century, where several Italians were killed). After World War I, France attracted newcomers to help reconstruct the country, mostly Italians, Poles and expatriates from the collapsed great (Russian, Austro-Hungarian, Ottoman) empires. Armenians who escaped the genocide of 1916, Russians, Romanians and Jews from Eastern Europe found refuge in big cities such as Paris and Marseilles, where they took part in arts and culture and worked hard in the garment industry. In 1930, France was the most significant immigration country in Europe: it received more foreigners each year than the United States during the same period.

As far as these immigrants were recruited, that process was not state-led, but private. It was managed by the Société Générale d'Immigration, a consortium of big firms comprising mainly the mines and steel companies. From 1919 to 1939, social associations – namely, the Service Social d'Aide aux Émigrants – and trade unions also helped with receiving and providing social care to immigrants. The establishment of authoritarian regimes in Italy, Germany and Spain brought in new flows of refugees who participated in resistance movements and joined trade unions so as to make contact with activist workers.

However, the crisis of 1930 saw the rise of a new actor in the field of immigration policy: public opinion. Growing xenophobia and anti-Semitism (Schor 1985) compelled the decision to stop immigration and repatriate many of the workers and their families (namely, back to Poland and Italy).

During Les Trente Glorieuses, the state tried to elaborate an effective immigration policy, though it largely failed. As post-World War II reconstruction

required a renewed labour force, employers in the sectors of housing, agriculture and industry put pressure on the government. The Office National d'Immigration (ONI) was created by the Ordinance of 1945 to deal with the entry and stay of foreigners in France. The Ordinance of 1945 established a state monopoly in the field of recruitment, except for Algerians. The same year produced a new law reformed the nationality act (earlier reforms date back to 1889 and 1927) and introduced *jus soli*.

During this period, demographer Alfred Sauvy started to play an important role. He was a highly influential scholar at the Institut National Études Démographiques (INED), the French demography institute that replaced the Alexis Crel Foundation after it was criticised for a dubious population policy based on racial selection ideas. Sauvy proposed a selective immigration policy resting on the idea that a migrant's capacity to assimilate depended on nationality. In his vision, Italians who had been seen as strongly undesirable in the 1930s became very desirable in the 1950s. However, the policy based on this idea rapidly failed because Italians did not come as numerous as foreseen, except in the Toulouse region, where they had the opportunity to become landowners and farmers. This is why employers rapidly went directly to various countries of origin to recruit workers illegally, thereby organising short-term work-related migration and leaving the families of migrants behind. These young male workers (approximately 200,000 per year) were then legalised by public institutions. The Ministry of Employment, which was in charge, thought the immigration would be temporary and that these migrants would return to their home country. As a consequence of these procedures, the ONI controlled only 18 per cent of entries in 1968. The remaining 82 per cent were legalised *a posteriori*. No law on immigration was voted between the Ordinance of 1945 and 1980.

The Bonnet Law of 1980, which regulated entry and stay, did not change the situation. In fact, it was never implemented because the majority in government shifted in 1981. In other words, over a considerable period of time, infringements to legislation on the control of immigration were tolerated. However, the French government did not fully give up control on immigration; it shifted to a more informal mode, via ministerial circulars, notes, telephone calls and telex. For example, an important circular at the time was the 1972 'Fontanet-Marcellin' (named after the Minister for Employment and the Home Minister), stipulating that automatic legalisation of illegal migrants had to stop. Such informal decisions not carrying democratic legitimacy but with still far-reaching impact were called *infra droit* ('sub-law') by the French lawyer Danièle Lochak (1976). Indeed, such decisions made it very difficult to exert judicial control since most measures were decided with no publicity, in secrecy, within small circles of decision-makers (i.e. the Ministry of Labour and some councillors close to General Charles Gaulle, such as Massenet). As a result, immigration was treated in a segmented way and without public debate. This

technocratic, non-democratic approach was the result of decision-makers' efforts to keep immigration non-politicised (Freeman 1979; for politicisation linked with security issues see Guiraudon 2000). On demand of business firms, the state only intervened to confirm, institutionalise and legalise movements of populations that had appeared.

For a while, Algerians were accepted as immigrants in France against the will of French colonial landowners in rural Algeria who feared labour force losses. Algerians entered more freely after World War II, when Algeria was still French. Algerian immigration was regulated through a special immigration policy, according to which immigrants from Algeria were ruled separately by the Office National Algérien de la Main d'Oeuvre (ONAMO). This policy was maintained by the Evian agreements of 1962 and lasted until 1973, when Algeria decided to stop labour emigration after racist riots in Marseilles. The unregulated introduction of immigrants was combined with *à la carte*-type management by the labour administration and the Home Ministry.

Public declarations by Charles de Gaulle, Georges Pompidou and some Ministers of Labour (André Gorse, Jean-Marcel Jeanneney) show that immigration was considered in the post-war period up until 1974 within a short-term approach. It was seen as a means to reduce social pressure and to answer demands for labour. Public institutions tried to keep the question of immigration separate from the great debates of the time (e.g. industrial policy, urban planning, reconstruction, housing, growth, the Algerian War, May 1968). Economically desirable immigration was to be kept apart from political struggles.

After Valéry Giscard d'Estaing was elected president (1974-1981), the government decided to stop immigration. The oil crisis, the rise of unemployment, the influence of similar decisions in 1973 in Germany, the Netherlands and Belgium and Algeria's unilateral decision to end emigration altogether explain this major turning point.

The period 1980-2006 is characterised by a series of laws and law initiatives that were introduced immediately following a shift from right to left, or vice versa, in the majority party in power. Each time, the new government wanted to present a new law on immigration within the framework of a symbolic policy addressed to public opinion. In 1980, the Bonnet Law on entrance and stay of immigrants was voted (Jean Bonnet was Giscard d'Estaing's last Home Minister). However, the law was never implemented. The left's arrival into power through François Mitterrand's 1981 presidential election can be seen as a starting point in the elaboration of a legal framework on immigration. Twelve laws on entrance and stay of foreigners were voted on over the 26 years of this period. Alternation of left and right governments, coupled with a major politicisation of the debate (particularly after Le Pen emerged at local elections in 1983, putting immigration at the core of his argument), explain the legislative frantiness as well as the high

symbolic value attached to immigration policymaking. The practice was to make small changes while conveying to the public the illusion that every new law would change immigration trends fundamentally. The security approach that stresses dissuasion of newcomers and criminalises illegal residence was introduced in the 1990s, as French immigration policy grew increasingly dependent on European decision-making processes, namely the *acquis communautaire* and a series of agreements defining European immigration policy, including Schengen in 1985, Dublin in 1990, Maastricht in 1992, Amsterdam in 1997, Nice in 2000 as well as summits on border controls such as Seville in 2002, Thessaloniki in 2003, The Hague in 2004 and the elaboration of a green book on economic migration in 2005. EU policies also introduced divided public competences, with asylum flows being decided at the European level and integration managed at national and local levels.

A general appreciation of the whole period between 1980 and 2006 can be fine-tuned by looking at specific policymaking initiatives. To start with 1981, hopes for a fundamental change were running high. In August, new State Secretary for Immigration François Autain wanted to strengthen legality by introducing judicial control for most administrative decisions. After deciding for a large regularisation of 150,000 illegal migrants (143,000 of whom were legalised), Autain introduced two new laws: one on entrance and stay that should restore judicial control; and one on the freedom of association for non-nationals. The law of 9 October 1981 established general freedom of association for foreigners, thus superseding the former requirement that an association be authorised by the Home Ministry once it declared its existence. The law of 17 October 1981 on entrance and stay modified the Ordinance of 1945 by confirming the halt on labour immigration and simultaneously protecting foreigners against unilateral decision-making and abuses by the administration. It also sanctioned employers of irregular migrants and fought illegal migration at large while strengthening the legal status of those who had settled in France. Some categories of migrants benefited from a consolidated stay. That was the case for second-generation migrants who were born in France and lived there, as well as for long-term residents, for foreigners who had married a French national and for parents of French children. The logic implied was that for integration to work, illegal immigration had to be fought ('Illegals are an obstacle to the integration of others,' said Minister of Labour Georgina Dufoix in 1983). The change in the political majority (towards the left) was thus decisive for changes in French immigration policy. However, it was not only this change in official power that made for the new laws: leftist associations had gained influence and did contribute to initiate these laws.

In 1983, an equality and anti-discrimination protest, the *Marche des Beurs*, united second-generation migrants in a walk from Marseilles to Paris, where they arrived triumphantly on 1 December 1983. The

movement supported the unanimous adoption of a second leftist law in Parliament on 17 August 1984. This law automatically granted a ten-year residence card to foreigners who had lived in France for a certain period of time. The card could be renewed automatically for foreigners who had married a French national, for parents of French children and persons who residing in France for more than fifteen years. Furthermore, the permanent resident card allowed access to all professions throughout the entire French territory. This step was considered one of the associative movement's main successes. Although foreigners had equal social rights since 1975, it was not until 1984 that the French public recognised immigrants not only as workers, but also as settlers. This law was a major step, though it did not mean that immigrants had managed to reach a truly equal position in society. For example, local voting rights for immigrants were postponed even though the left's 1981 common programme had promised to implement them. Indeed, the left feared public opinion that was increasingly under the influence of the National Front.

With Parliament's 1986 shift in majority and the right's subsequent arrival into power, security concerns were for the first time introduced in the ministerial discourse on immigration. New Home Minister Charles Pasqua, supported by rightist MPs, set the tone with his constant pledge for enhanced border controls. The Pasqua Law of 9 September 1986 thus restricted conditions for entrance and stay, though it did not suppress the ten-year residence card. Along with the new law, enforced repatriation measures led to the repatriation of 101 Malians on charter flights – a symbolic operation, with much media attention, that aimed to deter illegal newcomers. On the other hand, Pasqua's attempts to change the nationality code remained unsuccessful in the political climate of the upcoming presidential elections of 1988.

In 1988, the left came into power as Mitterrand was for the second time elected President and the National Assembly was dissolved. New Home Minister Pierre Joxe initiated a new law on entrance and stay, which was passed on 2 August 1989. This law restored judicial control on expulsions and indirectly introduced a possibility for legalising undocumented migrants. The ten-year residence card of 1984 was again maintained, showing that the left and the right had, for the most part, reached a consensus on the issue. Because of the outrage provoked by the First Gulf War in 1991 amongst civic *beur* associations (second-generation migrants of Maghrebian descent), the French government started doubting the second generation's allegiance. However, the strong associative movement finally managed to convince the French government of their loyalty to France. (This was a politically sensitive issue, since France had sent its troops to the First Gulf War).

In 1993, the right regained power. Pasqua was again in charge of the Home Ministry. New Pasqua laws on entrance and stay were adopted,

modifying anew the Ordinance of 1945. With the laws of 24 August 1993 and 30 December 1993, Pasqua announced a 'zero immigration' objective, thus presenting a challenge for French immigration policy. The objective, however, was – and still is – impossible: family reunification and asylum cannot be stopped because they are protected under the Constitution ('the right to have a family life') and under international conventions (the Geneva Convention of 1951 on asylum). For the first time, the law of 1993 situated French legislation on migration in a European context and the relevant authorities in charge changed, as elsewhere in the EU. Ministers for Social Affairs and Employment who had dominated discussions at the European level before Maastricht were replaced by Home Ministries. This change in the locus of authority was an important element for the paradigm shift in public policy. It can be explained by the fact that immigration has come to be understood as an issue of internal security rather than a social matter. Included in the Pasqua Law were the Schengen agreements of 1985 on reinforcing external European border controls and the Dublin agreements of 1990 on solidarity between European countries in the treatment of asylum seekers. This law also addressed French debates on dubious forms of entrance and stay. In France, there were rumours about sham marriages, pregnant Algerian mothers coming to France to give birth so their children could get French citizenship and they would be non-expellable and black polygamic families from Africa living on social subsidies. The law restricted family reunification, prohibited polygamy, introduced town mayors' control of mixed marriages – especially when the partner did not have a valid residence permit – and abolished reintegration of French citizenship for former colonials (except for Algerians who, as inhabitants of a former French *département*, fell under a special regime). Immigration to France was submitted to the possession of a housing certificate, which was delivered discretionarily by mayors. Residence cards were refused to those who had entered illegally. In polygamic couples, second spouses' residence cards were suppressed. Foreigners who had been condemned for criminal offence could be expelled under *double peine* ('double punishment'). Administrative retention in ad hoc retention centres was legalised for those confronted with repatriation.

This restrictive law was severely criticised by human rights associations like Human Rights League (LDH in France), the Mouvement contre le Racisme et Pour l'Amitié entre les Peuples (the movement against racism and for friendship between peoples known as MRAP), the Groupe d'Information et de Soutien des Immigrés (an information and support group for immigrant workers known as GISTI) and the Mouvement de l'Immigration et des Banlieues (an organisation dealing with immigration and the *banlieues* known as MIB). Nevertheless, leftist associations' influence on a right-wing government was limited. In fact, things turned out to be worse for the oppositional movements, as the Pasqua-Méhaignerie law,

a reform of the nationality law rendering access to French nationality more difficult, came to support the new law on entrance and stay.

In 1995, Jacques Chirac, who had led the right in the presidential elections, did indeed become President. Under the government led by Alain Juppé, no law was voted on entrance and stay. Mobilisation of a group of illegal migrants on a hunger strike for their legalisation led to the occupation of St. Bernard Church in Paris' immigrant district of La Goutte d'Or in the summer of 1996. As supporters of this *sans-papiers* movement put forward, it was exactly on 26 August, the annual remembrance day of the 1789 Declaration of Human Rights and Citizenship, that the protest was stopped by the police. They broke the door of the church to enter and arrest a number of irregular migrants inside. The event's actual violence as well as its symbolic meaning made public opinion massively supportive of the *sans-papiers* cause. As a result, some 'St. Bernard migrants' were legalised in a discretionary fashion. Meanwhile, terrorism had struck Paris: travellers were killed in two attacks on the regional express railway at a major connecting station. The young Muslim Khaled Kelkal who presumably took part in the terrorist attacks also planted bombs on a train in Lyon's surroundings. (He was finally killed by police in 1995.) In spring 1997, a restrictive law on immigration was passed. Inspired by Jean-Louis Debré, it penalised the housing of illegal migrants and encouraged denunciation. However, the law was not implemented due to another political shift.

In May 1997, the left returned to power with Lionel Jospin as Prime Minister. Home Minister Jean-Pierre Chevènement, a strong jacobinist – a republican and defender of a centralised democracy with a strong executive power – proved open to dialogue connecting sending countries around the Mediterranean with France as a receiving country. As such, Chevènement decided to implement a new immigration policy, one inspired by researcher Weil's July 1997 report on immigration and nationality, which Jospin had requested. Still in 1997, Chevènement decided to start a legalisation campaign that took as its primary criteria length of stay and existing family ties with people living in France. Such criteria contrast with the 1981 regularisation programme in which irregular migrants able to prove they were working had been regularised. In 1997, 90,000 of the 150,000 applicants were granted a French residency permit, mainly on the basis of existing family ties in France. In 1998, the Chevènement law on entrance and stay enforced keeping borders closed to salaried workers. However, it facilitated entrance and stay for some categories of immigrants not considered a 'migration risk', such as experts, traders, parents of families settled in France coming for short-term stay or ill persons who could not receive adequate medical care in their home countries. The law also foresaw automatic legalisation of long-term visa overstayers related to length of stay – between ten and fifteen years of residing in the country for students and twelve years for workers – and existing family ties in the country. Based on this

law, about a thousand migrants were legalised up until 2006. Under this law, the right to asylum is divided into three categories that take into account the new profiles of asylum seekers: constitutional asylum for 'freedom fighters' (very few have been recognised as such), conventional asylum under the Geneva Convention and territorial asylum for those not fitting within the convention's criteria (namely, Algerians, who in the context of the Algerian crisis of 1995 were threatened by non-state military groups). The left strongly supported this law, although it had generally been reluctant to take actions that might have resulted in attracting new migrants (Gaxie 1998). However, the law did not address the problem of non-regularised *sans-papiers* and, in 2002, 60,000 applicants had been waiting to be legalised since 1997. Other criticisms included local voting rights not being granted, not suppressing the *double peine* and restricting salaried workers' immigration to France through implementation of a labour market test. The test was a protectionist measure that had been introduced in 1974 for the first time to reserve employment for French nationals, but was extended to cover European workers in 1994. It stipulates that before giving a job to a third-country national, French authorities must check whether a French or a European worker is instead available.

The last year of the period during which the left was in power and Jospin was Prime Minister was characterised by non-decisive governance. In Sangatte, a small village on the French side of the Chunnel, thousands of illegal migrants had gathered in hope of reaching the United Kingdom by boat, lorry or train. They had come from Afghanistan, Pakistan, Iran and Iraq, and they had family or community ties to Pakistanis settled in the UK. They were looking for better living conditions in a country where there were no identity controls on the streets and where asylum seekers had the right to work after a six-month stay. By contrast, the right to work for asylum seekers had been suppressed in France in 1991. This unfolded under the pressure of public opinion, fearing that asylum procedures enabling access to work would attract newcomers. These illegal migrants were hosted by the Red Cross, subsidised by the Ministry of Social Affairs for this specific operation. Although the Dublin agreements provided that asylum be requested in the first country where protection is possible, the police and the Sangatte Red Cross administration dissuaded the migrants from staying in France. How the issue was managed led to heated discussions with the British government, followed by a short-term agreement. Again, the French leftist government seemed to fear that a decision taken in accordance with immigrant rights associations' claims would spark a counteraction from the National Front and public opinion. Such a reluctant political attitude drove many leftist activists who were disappointed by the socialist policy to vote for the extreme left in the first round of the 2002 presidential elections, thus leaving no chance for Jospin to take part in the second round. Chirac and Le Pen meeting face to face in the second round

was the predictable result of this voting behaviour. The socialist party was not in favour of generous measures for immigration because it feared losing votes.

With no left-wing candidate in the second round of May 2002, Chirac was successfully elected President (with 86 per cent of all votes). This was his second mandate. Hence, the right was back in power again. Prime Minister Jean-Pierre Raffarin nominated Sarkozy for Home Ministry. Sarkozy immediately launched several reforms on immigration. A law on entrance and stay of foreigners reforming the Ordinance of 1945 anew was passed on 26 November 2003. It sharpened the conditions for family reunification and marriage-based entrance. The law also intensified the fight against illegal immigration, putting in place sanctions against those who helped illegal migrants stay. It also introduced a *contrat d'accueil et d'intégration* ('reception and integration contract'), stating that newcomers had to learn French, as well as civic and republican values. From the start, the integration contract was delivered by what was then the Office des Migrations Internationales (OMI) and is now the L'Agence Nationale de l'Accueil des Étrangers et des Migrations (the national agency for the reception of foreigners and migration known as ANAEM) (Michalowski 2006). The second law of 10 December 2003, named the Villepin Law on Asylum after the Minister of Foreign Affairs,³ abolished the three statuses of asylum put in place by the 1998 law. Constitutional and territorial asylum disappeared, and all applicants were instead submitted to conventional asylum. New restrictive notions were introduced, such as 'internal protection' (protected zones in departure countries where one cannot ask for asylum), 'safe country of origin' and 'third safe country' (countries of provisional settlement). These notions diminished further chances to obtain refugee status, in a context where over 80 per cent of applicants were already refused. An unintended consequence of this restrictive regulation of asylum procedures was the increased number of illegal migrants. Another of its perverse effects was the application of the criterion 'safe country'. It is difficult to evaluate what a 'safe' country of origin is, especially in cases when the French Home Ministry or Ministry of Defence takes a leading role in peacekeeping, as occurred in the Ivory Coast. In such cases, the French Ministry of Foreign Affairs (which heads the Office Français de Protection des Réfugiés et Apatrides known as OFPRA) would have to determine how work has been executed by the Home Ministry (i.e. police) or Ministry of Defence (i.e. army). This could prove a touchy undertaking.

In 2005, after it was reorganised, Sarkozy returned to the government headed by De Villepin as Home Minister. He introduced another bill on immigration, the proposition for which was supported by slogans such as 'Yes to chosen immigration, no to unasked for immigration' and 'Selected immigration – successful integration'. Thus, Sarkozy was acting once more as a political entrepreneur in the field of migration and integration. This

time, however, the overall context had changed: the European Commission had issued a green book focusing on the benefits of reopening borders to new workers; employers were complaining about shortages of labour force in some sectors; and with economic liberalism, world competition for highly skilled recruitment was underway. These changes favoured the reopening of borders that had been closed to salaried workers since 1974. However, Sarkozy's project was confronted by resistance from the extreme right and part of his own party, the Union pour la Majorité Présidentielle (UMP). Hence, a compromise: stricter controls were introduced for other forms of migration such as family reunification and asylum, though these are difficult to reduce because, in practice, they are protected by international rules and treaties. The law of 24 July 2006 announced a new immigration policy as its objective, which according to Sarkozy had never been put in place in France. This new immigration policy was presented as drawing upon foreign selective immigration policies, like Canada's. Such a shift required the UMP's agreement with Sarkozy; the party was reluctant to increase immigrant numbers and would have been more familiar with Pasqua's 'zero immigration' credo. The law of 2006 was presented as a diptych of the 2003 law. Although not using the term 'quotas' (which had been rejected by Villepin), it opened borders to highly skilled and entrepreneurs (introducing the special category of 'capacities and talents'). The law permitted entry of qualified migrants as needed, as well as entry of low-qualified workers to fill gaps in sectors suffering from labour shortages (agriculture, construction, domestic and cleaning work, hotel and catering). Reopening the borders to 'useful' immigrants has been called *immigration jetable* ('disposable immigration') by left-wing opposition associations. In fact, it goes hand in hand with increased restrictions in the field of family reunification, mixed marriages and access to French citizenship. Furthermore, the legalisation procedure introduced in the Chevènement Law of 1998 is now closed, except when justified through humanitarian reasons. However, pressure by teachers, parents and networks, such as Réseau Éducation sans Frontières (the network for education without borders known as RSF) that defended the cause of pupils threatened with expulsion in the summer of 2006, led to the legalisation of 30,000 irregular families in August 2006 (i.e. only a few weeks after the new law was passed).

The last law, passed in November 2007, continued to open borders for selected workers. The Hortefeux Law, as it was called, mainly stressed limitations concerning family reunification. Its aim was increasing work-related immigration under the motto 'If we want be successful integration, we must master immigration'. Besson was nominated in 2009 as the new Minister of Immigration, Integration, National Identity and Solidarity Development. He decided to follow the repatriation and co-development policy undertaken by his predecessor, Brice Hortefeux, though he also

launched a debate on national identity. It failed, however, because the public did not see the debate as being necessary. The government that was formed in November 2010 decided to discontinue the Ministry of Immigration, due to the bad image Besson and his controversial policy had promulgated. Immigration now falls under the remit of Home Minister Hortefeux.

3 Access to citizenship and integration policies

As stated above, the terminology of integration and integration policies in France was first introduced in 1974. Before that, policies relating to how newcomers should become part of French society were provided for under the question of how newcomers could become French citizens: i.e. through nationality law. The following section looks at access to French citizenship through nationality over a longer period. The subsequent section analyses broader integration policies since 1974.

3.1 *Nationality laws and its reforms*

Since the beginning of the Third Republic in 1875, nationality in France has been seen as a potential tool for implementing assimilationist policies. The country's model for acquiring nationality is based on an equilibrium between *jus sanguinis* and *jus soli* – this balance being the result of France's long immigration history, catalysed by demographic and military needs in the second part of the nineteenth century. The French law on nationality was inspired by the 1804 civil code of Napoleon I, which substituted *jus sanguinis* with the former *jus soli* inherited from the Ancien Régime.⁴ Decision-makers tried to 'build France', as the expression went. They did this by giving foreigners easier access to French citizenship (in 1851, 1867 and 1889) in order to compete with Germany, whose population had rapidly grown over the nineteenth century (Bade 2002). The 1851 census (the first that counted foreigners separately) shows that, at the time, 300,000 foreigners were living in France. In 1900, the number had risen to one million. In 1889, an important reform of the nationality law gave greater importance to *jus soli* principles, which were further expanded through the reforms of 1927, 1945 and, finally, 1973. No political debates rose around these reforms because the nationality code was not a political issue and citizenship was seen as an outmoded topic (contrary to, for example, the question of class struggle that was at the forefront of the political scene in the 1970s).

However, citizenship rapidly became the subject of political debates, under the pressure of the extreme right during the mid-1980s. During this period, the National Front and its think-tank, the Club de l'Horloge,

launched a new debate on French identity. Their slogan was '*Etre français, cela se mérite*' ('Being French is something you earn'), and they began talking about '*les Français de papier*' (those who are French only on paper). The extreme right was suspicious of French persons of foreign origin (especially the so-called second generation). It suggested that these persons did not wish to be French, and that French nationality had been given to them against their will (they were considered '*Français malgré eux*'). Symbolically, the association was made with inhabitants of the former Alsace-Lorraine, who during both world wars were considered German citizens enrolled in the German army against their will.

The question of nationality and citizenship rapidly entered the field of high politics. Debates on identity grew (what does it mean to be French?), as well as on allegiances and loyalty. Such debates often pointed to double nationality as a problem, especially when citizens, current or prospective, were Muslim or Jewish; France had agreements on military service with Algeria and Israel. Supposed intrusions by countries of origin, especially when French nationals had to accomplish military service abroad, formed part of these debates. The left contributed to the debate by publishing an edited volume entitled *Identité française* (Espaces 89, 1985), in order to show that it refused to turn over the debate on French identity and citizenship to the extreme right.

The book's impact on public opinion was great. In November 1985, *Le Figaro Magazine* published an issue entitled '*Serons-nous encore Français dans trente ans?*' ('Will we still be French in thirty years?'). Its impact compelled the Chirac Government to appoint the Commission des Sages, the so-called Wise Men Commission, meant to advise on reform of the French nationality code. Set up in 1987, the commission was headed by high-ranking civil servant Marceau Long, who was vice-president of the Council of State, the highest administrative court. The commission organised some hundred hearings on the issue of nationality and citizenship. Contrary to expectations, the left and the right inversed their historical arguments: the right defended a definition of French nationality based on social contract and collective will to live together, arguments that had been defended in Rousseau's *Social Contract* and Ernest Renan's essay '*Qu'est-ce qu'une nation?*' in 1871. The left went with the theme of 'socialisation through residency', stressing the importance of the soil and using a late nineteenth-century rightist terminology that had been developed by right-wing ideologists like Maurice Barrès. This version of the debate helped many second-generation immigrants feel more at ease with their French identity, rather than doubting it, and to understand French nationality mainly as a protection against restrictive immigration reforms.

Leftist associations such as LDH, MRAP and SOS Racism were very opposed to the reform proposed by the commission. The reform debated the suppression of automatic access of French nationality to children of

foreigners born on the French territory, and found no need for a reform. On the other hand – and because it had been introduced to them by civic associations of the *beur* movement – many double nationals were convinced by the ‘citizenship of residency’ slogan, which strengthened their ties with the place where they lived. The commission concluded its work with many proposals, such as the idea of a naturalisation oath. It did not, however, conclude that there was a need for an actual reform. As a result, no decision was made on the eve of the 1988 presidential elections.

After this episode, debates developed within leftist associations for several years around the issue of renewed citizenship, amongst others during the bicentennial celebration of the French revolution in 1989. The Pasqua Méhaignerie Law was passed on 22 July 1993, when the right had returned to power after five years of a socialist government. This new law suppressed automatic access to French nationality for second-generation migrants who had turned eighteen, were born in France to foreign parents and had continuously lived in the country for five years (i.e. former article 44 of the law of 1973). The law did grant automatic access to French nationality for minors naturalised together with their parents, even if they did not live with them. A novelty in French migration history, the law introduced the notion of a will to become French. Young foreigners eighteen years and older who were ‘candidates’ for French nationality had to address their request for acquiring French citizenship to a judge. The law also prolonged the length of time it took to acquire French nationality through marriage; suppressed reintegration of French nationality for former colonials (except Algerians) whose parents had served in the army, worked in the administration or had been elected in public office; and denied access to French nationality to young people who had been condemned to penal sanctions exceeding six months. Although the law drew on ideas developed by the National Front, it was well received by parts of the jacobinist left who were traditionally sensitive to republican ideals of a shared social contract. For the first time since 1851, the *jus soli* principle lost some ground to *jus sanguinis*.

Supported by leftist associations, the left’s campaign pledged to revert to the law of 1973 if elected. Indeed, a year after the left had returned to power in 1997 (with Jospin as Prime Minister), a new law reinstalled the former equilibrium between *jus soli* and *jus sanguinis*. The Guigou Law (1998), as it was called, suppressed the need to declare one’s will to become French and restored automatic access to French nationality for eighteen year olds born in France to foreign parents. Nonetheless, and similar to the 1993 law, the reintegration of French nationality was only available to Algerians on the argument that, unlike populations in other French colonies, they enjoyed a specific status under colonial administration when Algeria was part of France, divided into three French *départements*.

Since the reform of 1998, the French nationality code has not undergone any major changes, except for some introduced through Sarkozy's law of 2006 concerning access to nationality through marriage. According to Guiraudon (2000), this is partly due to the fact that the debates around this issue ceased to be politicised. Today, the equilibrium between *jus soli* and *jus sanguinis* seems to have found political consensus.

3.2 *Integration policy*

Many foreign observers consider France a centralised, assimilationist country led by a strong state based on jacobinist and republican values. With this view, newcomers are expected to accept such values, while abandoning their individual and collective identities and corresponding attitudes and behaviour. The reality is of course more complex. Although the use of French as the official language became the rule early in history (with L'ordonnance de Villers-Cotterêts in 1539), France has always been *de facto* a multicultural country built on internal diversity. Diversity has been religious (e.g. Catholics versus Protestants) as well as regional and linguistic (Goubert 1966; Wihtol de Wenden 2004). These differences have been claimed at various moments throughout history, but the state has not taken them on board. The refusal to recognise Corsicans as a distinct people is a well-known example. In 1991, the Constitutional Council declared the special treatment of a people to be contradictory to the French Constitution, on the argument that the Constitution recognises one and only one French people, with no distinction of origin, race or religion. In 1999, this same high court also rejected the European Charter for Regional or Minority Languages as contradicting republican principles, and it reasserted the unity of the French people according to the Constitutional Council formula *indivisibilité de la République, égalité devant la loi et unicité du peuple* ('inseparable unity of the Republic, equality before the law and uniqueness of the French people'). However, there are many exceptions to the rules in France and French overseas territories: polygamy is commonly practiced in Mayotte, there are three kings in Polynesia and secularism is usually respected with reluctance.

De facto multiculturalism is also a problem for the republican vision, particularly since there is a growing awareness that members of ethnic groups are also potential voters. Abroad, France is considered an old-fashioned assimilationist, sovereignist country that pursues its own '*intégration à la française*' ('French-style integration'). Indeed, the term 'assimilation' remained in public discourse on inclusion policy from the 1880s to the 1960s. The term 'integration', already in use at the end of the French presence in colonial Algeria, was reintroduced in 1974 by Dijoud, the new State Secretary on Immigration appointed by Giscard d'Estaing. Invoking this term, the idea was to abandon an excessively individualistic,

authoritarian approach and to allow a certain expression of cultural diversity. From 1974 onwards, 'language and culture of origin' were thus taught in schools to children of foreigners, as was the case in the Netherlands and Germany. Beyond 'integration', public discourse referred to 'insertion' (a functionalist definition that reduced integration to the main instruments needed to live in France, used by Dijoud's successor Lionel Stoleru), and *vivre ensemble* ('living together') introduced in 1983 by Minister of Social Affairs Georgina Dufoix.

After the 1983 Marche des Beurs, several civic associations stemming from the *beur* movement were created, e.g. SOS Racisme and France Plus, both established in 1984. Some of them tried to spread the notion of a right to 'difference' (according to the term used by SOS Racisme). When the National Front responded to this formula, the associations devised the notion of a 'right to indifference' (France Plus). Concomitantly, researchers, like André Taguieff (1988), denounced the risk that ethnic claims would lead to cultural and social determinisms.

France has managed the legitimacy of Islam in the public sphere in a different way than other nations. For example, in Germany the question of whether teachers should have the right to wear a headscarf at school was submitted to discussion. The corresponding French debate concentrated on whether the pupils should have the right to wear a headscarf at school. The decision of the Constitutional Council in 1989 and the law of 2004 take the same stance on the question and prohibit ostentatious religious signs (e.g. headscarves) in schools, both allowing a public school to send a student home if he or she continues to bear such signs and stressing secularism as a republican value to be shared by all citizens. At the same time, other emblematic values have disappeared (e.g. military service was suppressed in 1995 by Chirac) and *fraternité* (brotherhood) is being seriously challenged by *la fracture sociale* ('the social gap'), a term used by Chirac during his 1995 presidential campaign.

Recently, a debate was reinvigorated concerning whether ethnic origin should be accounted for in French statistics. Begun in 1998, the heated academic discussion involved Michèle Tribalat supporting the introduction of ethnic categories in the French census and Hervé le Bras who was against it. Sarkozy declared himself in favour of such reform, arguing it would help assess discrimination. On his side were demographers, like Patrick Simon. However, public opinion does not seem ready for such a turning point vis-à-vis the French definition of citizenship. So far, the only category included is that of *immigré* ('immigrant'), i.e. a person born abroad with or without French nationality. An immigrant may acquire French citizenship in France, but if not, he or she remains a foreigner.

Ultimately, what is interesting about policymaking in the field of integration in France is not only these hesitations about assimilation, integration, insertion or plural citizenship, but also the territorial approach through

which existing differences are dealt with. The territorial approach was chosen because it allows treatment of difference in social terms vis-à-vis France's refusal to recognise ethnic groups. In a way, the introduction of this policy may be considered revolutionary: by pointing to existing differences within the French territory, it implies a certain infringement on jacobinist ideology. To give a concrete example: in 1981, the French government introduced *zones d'éducation prioritaires* (ZEP for short, referring to an educational priority zone), a positive discrimination scheme based on social criteria for districts where children suffered from cumulated discrimination. Throughout the 1980s and under pressure by several leftist mayors, such as Grenoble's socialist mayor Hubert Dubedout and Gilbert Bonnemaison, a mayor in France's poorest district, Seine-Saint-Denis, several measures relating to immigrants were included into an urban social development programme aimed at preventing violence. Several districts were concerned by this territorialised public intervention in the *politique de la ville* (urban policy). In 1990, a Ministry for Urban Affairs was created. The second minister of this ministry was the renowned Bernard Tapie, a self-made man of influence in Marseilles, who had been chosen by the socialist government because he was able to challenge Le Pen in TV broadcasts. The urban policy aimed to fight exclusion in 'territories of economic and social poverty'. Neither 'ethnicity' nor 'positive discrimination' was ever mentioned. These two terms are still taboo in France, where formal equality of rights is consecrated.

Since the mid-1980s, subsidies have been allocated to civic associations in an effort to maintain what are called 'social bonds' in districts struck by de-industrialisation and high rates of unemployment among first- and second-generation immigrants. These associations work with the local population and combat urban violence. This policy also introduced a division of competences between the Ministry of Social Affairs, the Ministry of Urban Affairs and their local partners, mainly municipalities. Since 1991, thirteen *sous-préfets* (high-ranking civil servants of the Home Ministry) also explicitly cooperated with actors of this urban policy. In 1993, the reunification of competences was symbolised through Prime Minister Edouard Balladur's appointment of Simone Veil to the position of Minister of Social Affairs, Health and Urban Affairs. A contractual policy was created between municipalities of the *banlieues* and the Ministry of the Town to delegate national competences to local actors (towns, regions, associations). In 1996, a pact was adopted to boost city development. Directed by Prime Minister Juppé, the pact identified 751 disadvantaged urban zones that required territorialised public intervention. In 1999, 1,300 districts and six million inhabitants were targeted in these urban contracts. Today, 750 *zones urbaines sensibles* (ZUS for short, referring to vulnerable urban zones) comprising 4.5 million inhabitants are included in the urban policy. In France, there are also 911 ZEPs in which 20 per cent of all the pupils of

the country are schooled, and 85 *zones franches urbaines* (ZFU for short, referring to a franchised urban zone) where firms can be exempted from municipality and state taxes if they create employment for locals.

As for cultural policy, emphasis on the local level led many associative activists who were formerly included in town partnerships to join formal municipal structures. Competences were delegated to cultural mediators and ethnic leaders from the top – by the state and municipalities – in order to manage urban, social and cultural projects at the grass root level. However, there were hesitations about how the republican model should be implemented. This was demonstrated in the choice between facilitating participative democracy and diversity through urban mediators and other actors in the urban context, thus reinforcing security around the value of rights and duties of French citizenship, versus helping elites born in the *banlieues* to leave so as to give them a chance for individual performance.

Another important aspect of integration policymaking concerns anti-discrimination. France has taken a long time to include discrimination policy in its credo of equal rights. The very fact that the French citizenship model is grounded in the notion of ‘formal equality’ – consecrated in the declaration of 1789 with ‘*Tous les hommes naissent libres et égaux en droits*’ (‘All people are born free and equal in rights’) – has delayed awareness of actual inequalities built upon ethnic and religious discrimination. Article 13 of the Amsterdam Treaty of 1997 forced France to implement an anti-discrimination public policy. In 1999, the Groupe d’Etudes sur les Discriminations (GED) was established under the auspices of leftist Minister of Social Affairs Martine Aubry to serve as a light structure for researching discrimination. Quickly thereafter, GED became the Groupe d’Etude et de Lutte Contre les Discriminations (GELD), now an organisation aiming to research, as well as fight, against discrimination. In 2000, a toll-free telephone number was created to collect testimonies from victims of discriminations and, in so doing, address some of their issues. Most of those who called in complained about discrimination at work and police discrimination, though GELD took very few claims to court.

GELD ceased to exist in 2003, but the Commission Nationale de Déontologie de la Sécurité (CNDS) was created by the law of 6 June 2000. Headed by former president of the Highest Court of Justice (the Court of Cassation) Pierre Truche, the independent commission was meant to combat institutional abuses caused by security forces (e.g. police, prison and army) during the repatriation of irregular migrants. The CNDS dealt with contradictory hearings between victims and members of security forces. The CNDS annual report, which was addressed to the President, pointed to the existence of police discrimination against French persons of Arab, African and Roma origins. So far, this institutional discrimination had been taboo in the French administration (Body-Gendrot & Wihtol de Wenden 2003; Wihtol de Wenden & Bertossi 2005). Two laws were

subsequently adopted: in 2001, one on discrimination in the workplace following the publication of a research report that had been commissioned by trade union CFDT and sociologist Philippe Bataille; in 2002, another addressing racist practices among employers and obliging them to prove they were innocent of indirect discrimination.

The government also took symbolic actions, such as expanding the Fonds d'Action Sociale pour les Travailleurs Musulmans d'Algérie en Métropole et Pour leur Famille (that is, a social action fund for Muslim workers from Algeria in France and their families known as FAS). FAS was created in 1959 for Algerian workers and their families and progressively extended its actions to cover the sociocultural needs of all foreigners and their descendants. In 2002, it was renamed the Fonds d'Action et de Soutien pour l'Intégration et la Lutte contre les Discriminations (an action fund to support integration and anti-discrimination known as FASILD). FASILD was formally dissolved in 2006 and reorganised as the Agence Nationale pour la Cohésion Sociale et l'Égalité des Chances (the national agency for social cohesion and equal opportunities known as ANCSEC), with a stronger focus on citizenship and solidarity. In 2004, another independent authority has been created, the Haute Autorité de Lutte contre les Discriminations et pour l'Égalité (HALDE), the high authority in anti-discrimination and equality headed by Louis Schweitzer, a high-ranking civil servant and former president director general of Renault. Despite its level of authority, HALDE has received little media attention and therefore remains largely ignored.⁵ As already stated, the fact that recognition of discrimination is still taboo in France contributes to this situation.

Another pillar of French integration policy is political inclusion. However, even after 30 years of debates – and although public opinion is now finally in favour of it – local voting rights have yet to be granted to foreigners. Following the creation of local consultative commissions in Belgium in 1972 and Germany and the Netherlands in 1975 (called 'parliaments of foreigners'), several French leftist associations such as the Fédération des Associations de Solidarité avec les Travailleurs Immigrés (the federation of associations for solidarity with immigrant workers known as FASTI) started claiming local voting rights and eligibility for all foreigners settled in France in 1975. They were followed by the French Communist party in 1980. They proposed to distinguish citizenship from nationality, the former to be understood as being based on active participation and the latter being a formal status that depends on the civil code. Defenders of local voting rights for immigrants encouraged municipalities (mostly leftist ones) to organise municipal consultative commissions of immigrants, which were either appointed by local powers or elected by foreigners. These consultative commissions were set up to prepare immigrants who generally came from non-democratic states to deal with political inclusion, as well as to help develop deliberative forms of citizenship in

municipal councils. The best-known examples were Mons-en-Baroeul, les Ullis and Amiens, where foreign inhabitants voted for their representatives in the municipal councils. Strasbourg also used to be part of the programme, and representatives are now also appointed in Grenoble and Paris.

In 1981, socialist candidate Mitterrand's leftist programme promised all foreigners local voting rights, along with freedom of association. Freedom of association was granted in the same year. During his long mandate (1981-1995), Mitterrand often repeated that he was personally in favour of such reform, but that public opinion was not ready for it.

For such reform to take place, it would have been necessary to change article 3 of the Constitution. The article foresaw that voters in local elections participate in the designation of the electoral group, which, in turn, proceeded to the election of senators. As a result, foreigners would have touched upon national sovereignty, which, according to the Constitution belongs to the French people (*'La souveraineté nationale appartient au peuple français'*). After years of internal debates within the socialist party, the Jospin Government (1997-2002) decided to abandon the project for fear of strengthening the extreme right's vote.

In 2002, the Green party proposed a bill that was adopted by the National Assembly but not passed by the Senate. This draft bill was based on the legitimacy of 'citizenship of residence' ideas that civic associations had been defending since 1981. To challenge local extreme-right tendencies in the suburbs, the bill spelled out arguments of socialisation such as length of stay, tax payment and the need to be involved in the city's grass roots campaigns towards local voting rights in order to show the extreme right another way of citizenship. The civic associations based their claims on the Constitution of 1793, which granted citizenship to foreigners who shared the revolutionary ideals and who had demonstrated solidarity with the movement even though they were not nationals. Thomas Paine and Anarchasis Clootz are illustrious examples of foreigners honoured with citizenship for their engagement in the French Revolution.

Since the French Revolution, and particularly upon signing the Maastricht Treaty of 1992, the debate on local voting rights has shifted. Article 8 of the treaty defines European citizenship and grants local voting rights and eligibility to Europeans who are settled in a European country other than their own. As a result, the French Constitution was changed, now stipulating that European voters do not participate in the designation of senators and cannot be elected as mayors. With this example of possible change at hand, leftist associations have kept claiming local voting rights on the basis of socialisation through residency. One of their main arguments has been the democratic deficit that arises from non-voting residents. Lately, even some rightist leaders (Yves Jégo, who is close to Sarkozy, as well as the Minister of Education and former UDF Mayor of Amiens, Gilles de Robien) are now pleading for such reform. The initial

counterargument that the reform would bring about an ethnic (i.e. Arab or Muslim) vote has been weakened by second- and third-generation immigrants voting as French citizens. Most recent polls show that they are French like the others, slightly more leftist, more abstentionist and more conservative in their private values than their compatriots, but showing no sign of retrieval into their own community on the political level (Brouard & Tiberj 2005).

Among European countries of immigration, France is one of the last to grant political mandates to French people of foreign origin (Bird 2007). There are no MPs of immigrant background in the French National Assembly, and there is only one senator of immigrant background. There are only two or three MPs of immigrant background for each mandate in the European Parliament. And at the local level, councillors of immigrant background (when there are any) are usually in charge of urban policy issues, not finances or international affairs. The lack of political inclusion of migrants in France – as compared with the UK, the Netherlands and Germany – illustrates the reservations of the French political elite who are trained at elitist universities and wary of ‘outside intruders’. During autumn 2005’s riots in Clichy-sous-Bois and other municipalities in Paris’ surrounds, a lack of inclusion was the feeling largely shared among youngsters holding French citizenship. Many rioters felt they were not considered full French citizens, and that the republican values they had been taught in school did not apply to them. They did not claim for a special ethnic or religious identity to be recognised. Rather, they requested equal rights and equal quality of life.

The recognition of Islam is another recent pillar of French integration policy. France has the biggest presence of Muslims in Europe, namely five million people of diverse national origin. Most are Maghrebians (Algerians, Moroccans, Tunisians), second- and third-generation immigrants with French nationality – about 500,000 of whom are Harkis and their families who fought with the French during the Algerian War. There are also Turkish and Pakistani immigrants, refugees from the Middle East (Afghans, Iraqis, Iranians, Lebanese) as well as sub-Saharan Africans from Senegal, Mali and Mauritania.⁶ Only a few Muslims come from English-speaking African countries, such as Nigeria.

The presence of Islam emerged as a question in the French public space in the mid-1980s, when Muslims started raising collective claims. For example, in 1984, strikes in the car industry combined working-class and Islamic mobilisation (one of the leaders of a Citroën strike, Akka Ghazi, became an MP in Morocco). Other claims concerned collective housing for foreign workers, prayer rooms, separate areas in graveyards, mosques that would be visible in the urban landscape and halal meat slaughterers and markets. Most public discussion concerned the question of headscarves at French schools. The issue was first raised in 1989, leading to broader

debate about Islam's compatibility with republican values. In France, Islam is mainly seen as a religion of the poor and the colonised, rarely associated with elites. There are many forms of Islamophobic rejection in the public opinion (Geisser 1997, 2004).

In order to establish a permanent dialogue with religious leaders and to manage Islam within secularised rules, two Home Ministers have endeavoured to create structures for dialogue and representation. The first was Joxe, who in 1989 established the Conseil de Reflexion sur l'Avenir de l'Islam en France (the council for reflection on Islam in France known as CORIF). Sarkozy followed in 2002, setting up the Conseil Français du Culte Musulman (the French council of the Muslim faith known as CFCM). The representiveness of France's main Islamic associations in the councils is controversial. The criterion used to select associations representing the community was the number of square metres of an association's prayer room. This criterion awarded less influence to smaller associations financed by Muslim families and more to big associations subsidised by, for example, Saudi Arabia (the Union des Organisations Islamiques de France, UOIF) and Morocco (the Fédération Nationale des Musulmans de France, FNMF). As a result, some Muslims, like Turkish Alevi groups who practice religion at home and never go to the mosque, are unrepresented.

Although the legitimacy of a national structure facilitating dialogue between public ministries and local authorities remains debatable, discussion about integrating Islam in secularised daily life has clearly been established. French home ministers have, for example, enjoyed a privileged partnership with the rector of the Great Mosque of Paris. This mosque was built in 1926 to thank Muslim soldiers who conquered Douaumont Fort near Verdun in World War I. Originally, the mosque depended on the French government in Algiers, but after independence, Hamza Boubaker was named rector and eventually superseded by his son Dalil Boubaker. Rector to this day, Boubaker is a French and Algerian binational, appointed by Algeria, who chairs the CFCM. He shares the Home Ministry's republican values, though is also considered a man open to dialogue and compromises.

Nonetheless, this institutionalised dialogue has not prevented France from hard conflicts, namely about wearing headscarves. After a Council of State decision prohibited the wearing of 'ostentatious signs of religious belonging' in schools, a law was voted on 15 March 2004 to similarly prohibit wearing 'ostensible signs'. What had changed in fifteen years was a slight shift from the word 'ostentatious' to 'ostensible', as well as the replacement of a juridical decision by a law. Despite some protests by intellectuals and foreign observers defending a multiculturalist approach, the law seems to have closed off the discussion, since only very few girls at school insist on wearing a headscarf. School-going girls refusing to take

off the headscarf must attend either private classes or have distance education. As critics have argued, this brings them back to a very traditional way of life.

The question of Islam in the public domain has also compelled a concerted effort by the President and some ministers to increase the visibility of exemplary persons of Muslim culture and/or belief in the decision-making sphere. In 2004, a Muslim *préfet* (a high-ranking civil servant representing the state's authority in a *département*) and a Muslim school rector were appointed. Such willingness to exhibit religious inclusion may seem strange in a secularised republic such as France. Although these high-ranking civil servants were mostly French of Maghrebian origin, ethnicity was never mentioned because it has no legal status in France, unlike religious diversity. Ministers of immigrant origin have also been appointed to appeal to voters of similar background, such as Tokia Saïfi in 2002 and Azouz Begag in 2005, followed by Rachida Dati, Rama Yade and Fadela Amara in 2007. Besides these examples, only a few French of Maghrebian origin hold important positions in the headquarters of main political parties. The appointment of a black (non-Muslim) journalist as a presenter of the 8 PM news on a public television channel in summer 2006 was considered a very important – even extraordinary – event.

4 Conclusion

To conclude, there is some consensus between the left and the right in the management of integration policy, while the policy of entrance and stay is a much more controversial issue. Since 2000, several public reports on immigration policy severely criticised the segmentation of immigration and integration responsibilities across several ministries. A recent report of the national audit court (Cour des Comptes 2006) focused on the fragmentation and dispersion of decision-making in immigration and integration policy. In fact, at least five ministries are traditionally concerned with these questions: the Home Ministry with entrance, stay and border control; the Ministry of Social Affairs with work, integration, population and nationality; the Ministry of Urban Affairs with urban and local management; the Ministry of Foreign Affairs with refugees; the Ministry of Justice with prisons and reintegration into French citizenship. So far, all attempts to change the division of powers and competences to avoid dispersion of decision-making have failed: power is concentrated in the hands of the Home Ministry, but other public administrations are reluctant to let migration and integration be exclusively ruled by that ministry. Former Home Minister and now President, Sarkozy argued in favour of the Home Ministry's playing a stronger role in migration and integration issues. During his campaign, Sarkozy even announced that once elected, he would create a

ministry of immigration and national identity to consolidate all responsibilities and strengthen coherent decision-making.

What are – in a comparative perspective – the peculiarities of policy-making vis-à-vis migratory issues in France? In principal, the nation state is in charge of these matters. However, the state has not always been able to actually control immigration flows and borders. This was particularly difficult during the economic boom, after World War II. The state has often found refuge in non-decision-making politics. That was the case during Les Trente Glorieuses (1945-1975), when attempts to control immigration failed. On the other hand, immigrant integration policies were long neglected by the state, and still are in many respects. More recently, the left who were in power (1998-2002) refused to make any decision in the field of integration for fearing of losing the presidential elections (which did in fact happen).

How does the picture appear when we look in more detail at specific actors? As stated, in France migration policies have mainly been decided at the national level. This has been strongly inspired by republican ideas, but at the same time – at least partially – influenced and negotiated by the most influent immigrant group: Maghrebians and their descendants. This group dominated civic movements and was called upon to negotiate with the government on several occasions. The *beur* movement transpired among civic associations with whom negotiations regarding integration policy took place at the Elysée. Maghrebians were called upon by the highest state representatives during the First Gulf War to guarantee the loyalty of the militancy. And the group is also consulted on the eve of each presidential election because of the ethnic vote's persisting phantasm. Maghrebians and their descendants are the most important ethnic actors in this game. They became familiar with the centralised, jacobinist state over 130 years of colonisation, and they know how to deal with citizenship and secularism, in spite of still being confronted with exclusion and discrimination.

Other traditional actors, such as employers and trade unions, were very strong between 1945 and 1975, but lost influence between 1980 and 2000, when de-industrialisation and unemployment were prominent. Employers have recently regained some strength, as labour shortages have led liberal economic ideas to have a greater impact on decision-making, especially concerning the reopening borders. By contrast, trade unions seem to be playing a very small role, being little involved with new issues linked to immigration, such as irregular migrants, 'immigrant pressure' on the labour market, sub-contracting methods with Eastern workers and transnational networks of human abuses (e.g. prostitution, modern slavery).

Since the 1990s, security concerns have become a very important factor in public policymaking. They first became prominent at the European level with the progressive criminalisation of illegal immigration that had started

in the early 1990s (the Schengen Acquis). Concerns became more predominant following terrorist attacks in Europe and even more so after 9/11. However, 9/11 cannot be identified as a turning point for immigration policy in France. Rather, it was an event that led to increased identity controls on the streets and, more generally, to Islam's conflation with illegality, delinquency and terrorism.

In the decision-making process, the most important referee has been public opinion. For quite a long period (1945-1975), immigration was a depoliticised issue. This was due to the fact that immigrant workers were needed for the booming economy. The rise of the extreme right in the 1980s and the way it placed immigration as the core of its political programme contributed to its higher profile. Immigration, formerly an issue in low politics, became an issue of high politics. In many cases, security arguments predominated and symbolic policies were favoured in order to reassure the right-wing electorate. The strategy of the left has been non-decision-making, as a means to differentiate itself from the right and to avoid appearing too much in favour of immigration or on migrants' side (e.g. concerning voting rights for foreigners, the legalisation of irregular migrants or Sangatte's asylum seekers).

At the local level, the question of how responsibilities were shared between the Ministry of Urban Affairs, municipalities, social actors and associations has varied on a case-by-case basis. However, the riots of autumn 2005 attracted public and political attention to the living situation in the suburbs of big French agglomerations, and new strategies were discussed. A strategy put in place as early as 2001 was by Sciences Po director Richard Descoings to open his Paris Institute of Political Studies to ZEP pupils. Access to such an emblematic institution, known for training future elites of the state, was enabled by establishing a simplified test and special pre-entry courses. Every year since, some twenty students from ZEP schools enter Sciences Po. Municipalities raised other strategic ideas, like offering job-seekers who live in notorious suburbs a public domicile address, in order to avoid automatic rejections by geographically prejudiced employers. In the same vein, associations working for social insertion introduced anonymous CVs, in order to avoid systematic dismissal of candidates with Arabic names. Restricted geographic and social mobility among inhabitants of the inner cities is perhaps the greatest challenge for future public immigration policy in France.

The role of civil society organisations (NGOs, human rights associations, solidarity associations and churches), experts and journalists is, according to French tradition in policymaking, very small. High-ranking civil servants do not trust civil society actors. Indeed, because they were not trained in the same places, neither group knows each other very well. The *grandes écoles* system – France's institutions of elitist higher education – influences French public policy heavily. In particular, civil servants

working in the *grands corps* (mainly the Conseil d'Etat, Cour des Comptes, Inspection of Finances) were trained at the École Nationale d'Administration (ENA), the École Normale Supérieure (ENS) and the Polytechnic School (the top engineering school in France known as 'the X'). As a consequence, when immigration becomes a problem in high politics, opportunities for discussion, negotiation and bargaining with decision-makers are very limited; high civil servants generally do not take into account the reality of migratory flows. Most directors in the ministerial administration overseeing immigration and integration come from elite networks trained in the above-mentioned schools. Furthermore, they usually hold these positions for a short period.

However, the dynamics of policymaking in France are changing. Factors and actors in favour of immigration and integration and factors and actors working against it are shifting. In favour of new policies are – besides political entrepreneurs like Sarkozy or some European institutions – employers needing labour, human rights associations struggling for more rights to be granted to foreigners and second-generation immigrants, churches, immigrants organisations, lawyers and ethnic leaders. Opposing immigration and holding conservative positions are most of the administration and public decision-makers, defenders of the welfare state who see newcomers as a challenge, European directives on border control and security issues, defenders of a French identity and a sovereign nation-state. There is a general consensus on integration between the left and the right, yet, when it comes to immigration, the two political camps fight fiercely – perhaps more symbolically than effectively. Today, however, the frontier is less between the 'left' and the 'right', but increasingly one of liberal versus authoritarian positions, even though those in favour of reopening borders are not always sensitive to integration challenges and vice versa. Because change would imply negotiating, status quo is preferred over trying out innovative policies. To sum up, the new configuration of the French decision-making process in the field of immigration is characterised as follows: employers and the government are deciding; Parliament obeys the government majority; unions and associations are pleading without much support for the recognition of new rights or the effectiveness of rights in general; and international structures are considered rather abstract principles (except for Europe whose influence is growing). There are very few factual, realistic debates about integration. Short-term thinking prevails, along with pressure coming from public opinion and electoral agendas.

Notes

- 1 Figures may differ depending on the sources and definitions used. For example, according to the UN Population Division, France had 6.6 million international migrants in 2009 (10 per cent).
- 2 Muslim organisations from Morocco and the Gulf countries participated in these discussions, for instance, by offering financial support to build prayer rooms.
- 3 The Minister of Foreign Affairs has headed the refugee management organisation OFPRA in partnership with the Home Minister since 2003.
- 4 In the Ancien Regime peasants were considered landowners' property if they were not free (i.e. serfs).
- 5 In 2010 it was announced that HALDE would be replaced by the Defender of the Citizen, along with the CNDS and the Defender of Children.
- 6 Half of the sub-Saharan Africans in France are Catholic, coming from Congo, Cameroon and the Ivory Coast.

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3 The case of Germany

Maren Borkert and Wolfgang Bosswick

1 Introduction

The making of migration policies is a multidimensional and complex process. It both involves and affects different spheres of society – local, regional, national, international – and calls for interaction across a multitude of social-political actors. What's more, policies have a double nature: their intentions and outcomes are not necessarily one in the same. Besides intentionally constructed policies, it is important to consider the effects of shadow decision-making as well as the non-policies and contra-intentional outcomes of policy measures. These aspects of post-war Germany's policy formulation and outcomes, both intended and unintended, will be described in this chapter. The following sections will suggest possible linkages between these driving factors and their reciprocal influence.

German migration history is marked by the continual employment of foreign labour, beginning with agriculture in the Prussian era and shifting to industrial work in World War II, which has remained a major source of employment up until the present-day. In 1944, several sectors, such as agriculture, mining and chemicals, saw the share of foreign labourers grow up to 40 per cent (Bade 1983: 56). This pattern was interrupted only during the economic crisis at the end of the 1920s and during the end of World War II when, in four years, 13.7 million refugees and expelled ethnic Germans from Central Europe immigrated to the three western zones of what would become the Federal Republic of Germany (FRG) (Bade 1983: 59).¹ Although immigration constitutes an integral part of German history, the first substantial migration movements to the country took place as a consequence of World War II. This benchmark, therefore, marks the starting point of this chapter.

In post-war West Germany, a large share of the labour demand could be met by returning German prisoners of war (4 million until the end of 1950), refugees of German descent from Central Europe (approximately 4.7 million) and by persons emigrating from the German Democratic Republic (GDR) (approximately 1.8 million until 1961) (Bade 1985: 60). In 1950, these three groups of migrants amounted to 16.7 per cent of the West German population, increasing to 23.9 per cent in 1960 (Herbert 1990: 196). Although by law they were treated like Germans and

considered themselves Germans, their integration took place not without conflicts. The autochthonous population often showed open hostility towards these *Flüchtlinge* ('refugees'), raising concerns about their different culture and showing prejudices about their unwillingness to work, perceived uncleanness and assumed tendency towards criminality (Oberpenning 1999: 302; Schulze 1997: 53-72).

Nevertheless, these migrants integrated themselves successfully into the German economy and political system. Enjoying full citizenship rights, they were legally enabled to articulate and safeguard their interests in the given economic-political structure of West Germany. This mobilisation led to an assimilation process in which the political structure of the host society had to respond to the migrants' demands, instead of giving in to the resentments expressed by the autochthonous population. Even though labour demands of the *Wirtschaftswunder*, the booming economy of the 1950s, could be met by many migrants of ethnic German origin, regional labour demands emerged in specific sectors. The sectoral labour shortages compelled farmers in south-western Germany to employ the first Italian 'guest workers' in 1952, even in spite of the general unemployment rate of 9.5 per cent at that time (Heckmann 1981: 149f).

An increasing demand in construction and industry, partly due to the formation and rearmament of the German armed forces in 1956, led to an extension of active recruitment of foreign workers. This occurred through agreements with several European countries: Italy in 1955, followed by Spain and Greece in 1960 and Turkey in 1961. These agreements were not unilateral in the German interest; several sending countries intervened in order to expand their migrant numbers or to be considered for the guest worker programme (Steinert 1995). After the construction of the Berlin Wall and the closure of the GDR's border in 1961, further agreements with Morocco, Portugal, Tunisia and Yugoslavia were signed up until 1968. One of the most important decisions of Germany's post-war labour recruitment was made in 1955, when the government, together with employers' associations and unions, agreed upon the full integration of labour migrants into the social security system (Mehrländer 1980: 77ff). Since then, the German social security system did not, in principle, differentiate between foreigners and German nationals.

As a consequence of the oil crisis of 1973, a halt on recruitment was imposed. At that time, 2.6 million foreign workers were employed in the German economy, among them Turks (23 per cent), Yugoslavians (18 per cent) and Italians (16 per cent) (Lederer 1997: 52). Although the employment of guest workers was intended to be temporary by both the host society and the migrants themselves, there was no enforcement of the rotation scheme. On the contrary, since the migrants were employed in unattractive sectors of the industry (mining, construction, metals and textiles), German employers were interested in keeping these trained foreign

labourers. In the early 1970s, as it was becoming more and more obvious that the rotation strategy was not feasible, the share of non-European migrants and their public visibility increased. Parallel to the 1973 halt on recruitment for non-European Economic Community (EEC) nationals, the official rotation policy was replaced by one promoting voluntary repatriation. Family reunion (providing for spouses and children below age sixteen) has been the only option for regular immigration into Germany from 1973 onwards. As such, the ambiguous policy to stop new recruitment, to promote voluntary return and to socially integrate those who were unlikely to return was introduced into German migration management (Heckmann 1994: 161).

The 1990s brought a new turn in Germany's migration policy. The dismantling of the Iron Curtain and German reunification eliminated a major migration barrier to the country. At the same time, the civil war in Yugoslavia generated massive refugee movements, which were hosted predominantly by Germany and Austria (see Annex 1 Figure 1). These refugee movements culminated in 1992 at a peak of 438,000 applications, while the immigration of ethnic Germans – since 1990, predominantly stemming from states of the former Soviet Union – climaxed in 1990, counting 397,000 immigrants (see Annex 2 Table 1).

2 The evolution of Germany's migration provisions

In 1965, post-war West Germany enacted its first legal provision in matters of immigration and stay. It replaced the Foreigner's Police Decree from 1938, thus harmonising the variety of regulations adopted at the *Bundesland* level with a new Foreigners Law (Santel & Weber 2000: 111; Treibel 1999: 56f).

2.1 *Halt on recruiting non-EEC nationals (1973)*

The 1973 halt on recruiting non-EEC nationals, referred to as the *Anwerbestopp*, and the official policy of promoting voluntary repatriation as central elements of the new paradigm of Germany's migration policy unintentionally led many foreigners to stay in the country. After all, the option for re-entry had been explicitly rejected. When in 1978 concerns arose about growing conflicts among immigrant and autochthonous populations due to housing, medical service and education problems, German Parliament approved the establishment of a Commissioner for the Promotion of Integration of Foreign Employees and their Families, affiliated to the Ministry of Labour and Social Affairs. In September 1979, its first commissioner, Heinz Kühn, published a memorandum on the state of integration of foreign migrants, demanding an active integration policy

for the given migrant population (Geiß 2001: 128). Even if the establishment of such an office might suggest that the need for integrating migrants was officially recognised, in the following two decades Germany's migration policy was marked by defensive and restrictive measures. Development of a comprehensive integration policy stagnated.

2.2 *Promotion of repatriation (1983)*

In December 1983, the Law for Promoting the Repatriation of Foreigners (Rückkehrförderungsgesetz) came into force. The law subsidised voluntary return by granting the foreign workers a share of their prospective German pension in cases where there was permanent resettlement abroad. About 250,000 migrants returned under this scheme, but the government's expectations went unmet. Repatriation numbers fell far below the intended figures, and it turned out that many of the returnees only accelerated their already planned return project in order to benefit from the programme (Santel 2000: 112). While the intended result of the law was very limited, its implicit message to both the foreign population and the German public was loud: counteracting the goals for social integration among settled migrants (Meier-Braun 1988: 69). Although the recruitment halt officially stopped demand-driven migration to Germany and the figure of employed foreign workers consequently decreased from 2.6 million in 1973 to 1.6 million in 1984, approximately 3 million foreigners settled in Germany up until 1980 via family reunion (Lederer 2001: 141). Besides the widely ignored family reunion, in the late 1970s, a second side door for immigration became relevant: supply-driven immigration via the asylum procedure according to article 16 (2.2) of the Grundgesetz, Germany's Basic Law. From 1980 onwards, the right to asylum became the focus of public discourse on migration and numerous legal initiatives and deterring measures (Bosswick 1997: 56f). In the national elections campaign of 1986-1987, conservatives claimed that multicultural foreign infiltration posed a serious threat to German national identity, which coincided with increasing numbers of asylum seekers from non-European countries such as Sri Lanka, Iran and Lebanon (Bosswick 2000: 46; Lederer 1997: 274). During the same year, the number of xenophobic attacks against asylum seekers and foreigners increased (Lederer 1997: 167), suggesting a direct link to the heated public debate on asylum in the country. Nevertheless, the government argued that the number of asylum seekers should be reduced in order to solve unrest within the German population and to combat this violence, thus legitimating the alleged causes of xenophobic attacks (Bielefeld 1993).

2.3 *Naturalisation provisions and openings for labour immigration (1991)*

In 1990-1991, the conservative government under Helmut Kohl established a new Foreigners Law to replace the 1965 regulations. The new law regulated immigration and the legal status of immigrants under the family reunion scheme, thus replacing various *Länder* regulations and what had been the foreign authorities' powerful discretion. Further, it guaranteed return to Germany for foreigners with permanent residence status. Although the new law was heavily criticised for its restrictive tendency in many aspects (see e.g. Huber 1992), its provisions regarding German naturalisation law, in particular, were innovative. For the first time, foreigners residing in Germany for fifteen years were entitled to a right to naturalise, no longer being subjected to decisions by the foreign authorities (§§85, 86 AuslG 90), and naturalisation was made easier for foreigners between sixteen and 23 years old if they had already stayed continuously in Germany for eight years. This introduction of *jus domicili* into German citizenship legislation officially acknowledged long-term resident migrant minorities as a fact, although the right to naturalise was temporarily granted until a deadline in 1995. For the first time in the history of German migration policy, these amendments introduced elements of citizenship regulations found in classic countries of immigration, albeit under quite restrictive conditions. Naturalisation was understood by the government as the final step of a successful integration process, a concept still upheld by the conservative mainstream today.

At the beginning of the 1990s, two other schemes for immigration were introduced into Germany's migration policy. They raised little interest in public, though in fact concluded the policy of non-immigration adopted since 1973.

One legal entry to immigration was opened by the last, already democratically elected government of the post-revolution GDR in 1990. This was a law allowing the immigration of Jewish persons from the former Soviet Union via a facilitated procedure. After the reunification in October 1990, united Germany continued to practice this scheme. Although numbers were comparatively low (approximately 160,000), this immigration had a huge impact on Germany's small Jewish communities. Some quadrupled within a decade, which posed serious challenges for communities faced with the immense task of integrating their new members. This immigration path was strongly restricted in 2006 by new administrative regulations that were issued in consensus with Germany's Jewish communities.

The second scheme was constituted by the so-called *Anwerbestoppaufnahmeverordnung*, a decree on exceptions from the halt on recruitment. Enacted in 1990, this affected German society on a larger scale by defining the groups of labour migrants admitted to entry. Within this regulation, *Werkvertragsarbeitnehmer* ('contract labourers') and *Saisonarbeitnehmer*

(‘seasonal workers’) were the most relevant. The term ‘contract labourers’ defined employees of foreign companies subcontracted by German enterprises, usually in the construction industry. They were admitted to stay for a maximum of three years; to meet labour market requirements, the Ministry of Labour and Social Affairs determined regular annual quotas. Bilateral agreements on this programme were concluded with several Central and South-Eastern European countries. Although contracting foreign labour had existed *de facto* since 1982 on a small scale (10,000–20,000 labourers), these numbers only started to grow during the 1990s. In 1992, they reached a maximum of 95,000. Nevertheless, the programme provoked harsh criticism by German labour unions. During the following years, the quota was no longer exhausted (Lederer 1997: 249). In contrast, the employment of seasonal workers did not raise major opposition. Since 1991, seasonal workers were admitted for a maximum of three months per year provided the given labour demand in certain sectors (e.g. farming, forestry and restaurant workers) could not be fulfilled by German or EU citizens. Their numbers ranged from 130,000 in 1991 to 221,000 in 1996.

Furthermore, since 1991, guest employees from Central Europe have been granted entry for an eighteen-month maximum stay in order to acquire language and special professional skills. Qualified labourers of certain professions (hospital and geriatric nurses, language teachers, speciality restaurant cooks, scientists, managers, highly qualified specialists, artists, models, professional athletes and coaches) have also been accepted in small numbers without explicit caps on quotas or duration of stay. Finally, citizens of neighbouring countries have been accepted as commuters (spending, at most, two nights per week in Germany).

In substance, these immigration programmes did not contribute significantly to the migrant population in Germany, though they did regularise demand-driven immigration for the first time since 1973. A few admitted migrants notwithstanding, irregular movement and employment, to varying degrees, also came through each of Germany’s nine doors for immigration. Those entryways are as follows:

- 1 internal EU migrants
- 2 spouses and children of permanently resident foreigners
- 3 ethnic Germans
- 4 Jewish immigrants from Commonwealth of Independent State CIS countries
- 5 asylum seekers
- 6 Geneva Convention refugees
- 7 temporary protection refugees
- 8 new guest workers (e.g. contract labourers)
- 9 foreign students.

The supply-driven asylum system, in particular, became increasingly linked to illegal migration and human smuggling, or failed asylum claims resulted in disappearance and illegal stay. Being a relevant entryway for regular immigration, family reunion can only be estimated in terms of size, since no central statistics are available. A calculation of the upper limit for family reunion immigration during the 1990s resulted in an annual average estimate of 400,000 persons (Lederer 2001: 154). Although actual numbers would be lower than these limits, family reunion immigration is likely to be Germany's most significant immigration source, clearly exceeding all other immigration schemes during the 1990s.

Ignoring these immigration sources, which often substantially exceeded the number of newly incoming asylum seekers, the 1990s in Germany were dominated by a heated political and public discourse on asylum. Facing increasing political pressure from local communities sheltering incoming migrants – and with a view to comply with 1992's EU-level London regulations, adopted by EU ministers of immigration on the criteria for designating a third country as 'safe' – the Social Democratic Party (SPD) agreed to amend article 16 of German Basic Law (GG) in December 1992 (resulting in introduction of article 16a). Among other regulations, the right to asylum became restricted by the safe third country rule, the immigration of ethnic Germans was limited to approximately 225,000 persons annually and the citizenship law was amended (Bosswick 1997: 67). Since legal access into the German asylum procedure was literally only possible via an airport (approximately 17,500 applications were counted up until the end of 1999), the vast majority of 811,000 asylum seekers between 1993 and the end of 1999 entered illegally and disguised their entry paths to avoid deportation to a safe third country of transit, thus rendering the safe third country rule of the amendment ineffective. (Illegal entry followed by an immediate asylum application is not persecuted.) A consequence of 1992's 'asylum compromise', together with an intensified border control, created a bustling market for the professional smugglers who became necessary for crossing the German border.

In general, the policy on foreigners continued its restrictive course during the 1990s. Introduced in 1997 was another amendment to the Foreigners Law, which required visas for unaccompanied minors from Turkey, the former Yugoslavia, Morocco and Tunisia, as well as the application for a residence permit for already resident foreign children from these states, most of them already born in Germany. The asylum and temporary protection regulations, especially, became extremely restrictive; they pushed the vast majority of civil war refugees from the Balkans into 'voluntary' return (Bosswick 2000: 50).

2.4 *Migration as a resource and a new Foreigners Law (2000-2005)*

The new millennium, though, brought significant changes to Germany's migration policy. German discourse on immigration underwent a profound transformation, where the emphasis shifted from restriction to the notion of immigration as an important resource in global competition. Minister of Interior at the time Otto Schily promoted the general reform of legislation concerning immigration and foreigners, and installed an independent immigration commission whose task was proposal development. The commission assembled politicians, representatives of important institutions such as churches, unions, industry associations and experts. It was chaired by the former president of the German Federal Parliament (Bundestag), Rita Süssmuth (CDU). Results were presented on 4 July 2001 in a comprehensive, well-founded report (Zuwanderungskommission 2001) concluding that immigration had become necessary for economic and demographic reasons. As such, the report recommended introduction of a point system similar to the Canadian model, as well as establishment of a Federal Office for Immigration and Integration whose function would be to coordinate immigration and refugee protection. The commission's recommendations were welcomed by the SPD, the FDP and the Green Party, as well as UNHCR, various churches, employers, unions, foreigners' councils and representatives of migrant groups. However, the two main conservative parties, the CDU and the CSU, rejected the proposals, criticising them for extending rather than limiting immigration.

Shortly after the commission's report was presented, Minister Schily proposed a new immigration and foreigners' law. The proposal only partly followed the commission's recommendations, such as plans for a complete restructuring of the Foreigners Law; it fell behind in several areas (especially in the field of asylum and concerning the age limit for children to immigrate within the family reunion scheme). Making such concessions to the conservative opposition, the government tried to gain support in the second chamber, the Bundesrat, despite its being dominated by conservative-led *Länder*. Efforts were squashed by the conservative opposition, jointly composed of the CDU and the CSU, ruled by Bavarian Prime Minister Edmund Stoiber (CSU). In April 2004 following intense discussions and several rounds of conferences in the two chambers, representatives of the governing Bündnis 90-Green coalition declared that the negotiations had reached an impasse. Further exploratory talks would be needed in which then chancellor Gerhard Schröder would negotiate face to face with opposition party leaders Guido Westerwelle (FDP), Angela Merkel (CDU) and Edmund Stoiber (CSU). In May 2004, Schröder proposed a compromise that was eventually accepted by all involved parties. Follow-up talks ensued among Federal Minister of Interior Schily (SPD), Saarland Premier Peter Müller (CDU) and Bavarian Minister of Interior Günther

Beckstein (CSU). On 1 July 2004, the compromise passed the Bundestag, to be followed by the Bundesrat, on 9 July, and eventually came into force on 1 January 2005.

This new immigration law introduced several innovations into Germany's migration management. Notably, it reduced the various residence types from past migration schemes to two permits: for limited residence and for permanent settlement.

This law offers highly qualified immigrants the option for permanent residency if they invest at least € 1 million in their business in the country and, through their own employment, create at least ten jobs. Foreign nationals who have graduated from a German university or polytechnic are allowed to stay a year after graduation to seek employment in Germany. A general ban on recruiting low-skilled labour was maintained, restricting the recruitment of qualified persons as well. For the latter, in individual cases exemptions are made when public interest in such employment can be raised. The originally proposed point system modelled after the Canadian regulations was abandoned as part of the compromise.

Concerning humanitarian immigration, the law grants refugee status in cases of non-state and gender-specific persecution. This complies with the EU asylum directive.

Several provisions for integration measures were also implemented in the new law. New immigrants eligible for permanent residency are entitled to participate in integration courses. Under certain conditions, participation is mandatory for resident foreigners, such as long-term residents receiving welfare payments or migrants classified by the authorities as being 'in special need of integration'. For those refusing to participate in the courses, possible sanctions include a reduction of welfare payments; refusals, moreover, are considered during decisions on residence permit extension. These integration courses are funded by the federal government, while the *Länder* cover costs for accompanying social counselling and child-care while participants attend the course units.

With regard to ethnic German immigrants, family members accompanying *Spätaussiedler* are now made to prove their basic German language skills before immigrating. This came in reaction to this group's increasing integration problems.

In the area of security, the compromise introduced an extended deportation order that can be issued by state or federal authorities on the basis of an 'evidence-based threat assessment'. Legal redress is limited to a single appeal to the Federal Administrative Court. Mandatory expulsion was introduced for foreign nationals who are members or supporters of terrorist organisations. Discretionary expulsions can also be imposed on so-called 'intellectual arsonists' (e.g. 'hate preachers' in mosques). If a deportation cannot be effected due to some obstacle (e.g. facing risk of torture or the

death penalty in the country of origin), the foreigner must report to the authorities on a regular basis.

For the first time in Germany's legislative history, regulations for immigration, labour market access, the stay of foreigners and the integration of resident migrants were combined under an integrated legislative act, differentiated only according to purpose of residence. Meanwhile, a parallel application process for residence and work permits at the respective authorities for foreigners and labour – which had operated as interdependent bodies sharing bureaucratic overhead – was replaced by a single procedure at the local foreign authorities, creating what some called a 'one-stop government'. With regard to refugees, the law no longer referred to the right to asylum, which carries a long history of political controversies, but came to regulate residence permits for political asylees as well as other refugees (e.g. Geneva Convention, de facto refugees) under the common heading of 'humanitarian immigration'. The law thus abolished discrimination of refugees who did not meet the narrow criteria for political asylum (Bosswick 2002: 46). A completely new feature of the law was the inclusion of integration measures.

The former Federal Office for the Recognition of Foreign Refugees (BAFI) in Nuremberg was renamed the Federal Office for Migration and Refugees (BAMF). Assigned to the administration and implementation of the new law, BAMF now cooperates with labour offices and the federal labour administration. It is in charge of issuing regulations for integration courses and implementing integration measures at the federal level in cooperation with local institutions.

2.5 *European harmonisation and German migration policy (2007)*

On 28 August 2007, the Directive Implementation Act for EU Directives on Residence and Asylum Issues – herein referred to as the Directive Implementation Act – entered into force, thus changing the 2005 provisions again. Apart from implementing eleven EU residence and asylum directives, the act incorporated evidence from evaluation of the 2005 Immigration Act, particularly concerning family reunification and its potential abuse through sham marriages and bogus adoptions as well as combating forced marriages. The 2007 Directive Implementation Act also emphasised the need for a consistent fight against terrorism through immediate expulsion of individuals like so-called *Hassprediger* ('hate preachers') or *geistige Brandstifter* ('mental arsonists') and sentencing traffickers to imprisonment. It also introduced a residence title for victims of trafficking. Those willing to testify in criminal proceedings are granted legal residence for the duration of the proceedings.

Of particular political significance was 2007's introduction of the Gesetzliche Altfallregelung, the regulation for longstanding cases. These

legal provisions concern refugees who for many years have been ‘tolerated’ in Germany (thus falling under the category of *Duldung*: i.e. enjoying a suspension of the obligation to depart or be deported, but lacking a regular residence title). Contrary to initial expectations, this regulation was used only by a relatively small number of potential claimants: by the end of 2007, requests were made only by 22,900 of the 100,000 refugees with humanitarian stay who fulfilled the application requirement of a six- to eight-year minimum stay in Germany. What’s more, the claim success rate was very modest: only half of the claimants (approximately 12,000 persons) were awarded a residence permit.

With concerns that family reunification was often being misused, Germany introduced the proof of basic German skills for spouses in 2007, invoking an optional EU law. Aiming to combat forced marriages and to promote integration processes, the law established a minimum spousal age of eighteen. To avoid social welfare abuses, the migration of spouses was also contingent on a *Lebensunterhaltssicherung*, prior assessment of a means of their subsistence.

Table 3.1 *Milestones in Germany’s migration provisions*

1965	Foreigners Law
1973	Anwerbestopp: halt on recruitment of non-EEC nationals
1978	German Parliament approved establishment of the Commissioner for the Promotion of Integration of Foreign Employees and their Families, affiliated with the Ministry of Labour and Social Affairs
1983	Law for the Promotion of Foreigners’ Repatriation, political mobilisation against ‘abuse of the right to asylum’
1990	New Foreigners Law, replacing the 1965 regulations
1990	Anwerbestoppausnahmeverordnung: decree on exceptions from the halt on recruitment, escalation of the dispute on asylum and constitutional article 16 (right to asylum for political refugees)
1992	So-called ‘asylum compromise’: amendment of article 16 of German Basic Law, restricting the right to asylum by the safe third country rule; amendment to the German citizenship law (introducing a limited <i>jus domicili</i>)
1997	Amendment to the Foreigners Law: increasing visa requirements for foreign unaccompanied minors
2000	Installation of Independent Commission on Immigration (important representatives of NGOs, churches and business), recommending in its final report in 2001 the introduction of a point system similar to the Canadian model; introduction of <i>jus soli</i>
2001	Proposal for an Immigration and Foreigners Law by Minister of Interior Schily, resulting in a prolonged political conflict between the conservative opposition and the government being largely supported by civil society and trade associations
2005	New Foreigners Law, combining regulations for immigration, labour market access, the stay of foreigners and the integration of resident migrants under an integrated legislative concept for the first time
2007	EU Directive Implementation Act amending national law entered into force on 28 August 2007
2008	Labour Migration Law adopted by the Federal Cabinet on 27 August 2008

To foster the overall integration and participation of immigrants in German society, the federal government introduced integration courses at the national level. These were primarily geared to teach German language skills, while simultaneously promoting the ‘historical, cultural and legal orientation’ of German society (Federal Ministry of Interior 2010).

3 Immigration and immigrant policymaking in contemporary Germany

Although a consistent integration policy only came into force in Germany in 2005, initial practices of immigrant inclusion are closely intertwined with immigration policies from the early 1950s onwards. Thus, immigration and integration policies are dealt with jointly in this chapter. Moreover, the German nation and its society experienced profound changes only recently – with reunification in 1990. This year will thus constitute the starting point of this section, highlighting discourses and policy-making actors along the way.

3.1 Policies from 1990 onwards

Migration policy in a unified Germany during the 1990s was coloured by worries that major movements would follow the fall of the Iron Curtain. From 1990 until 1997, restrictive amendments related to the Foreigners Law, ethnic Germans and readmission agreements came in short successive intervals. Public discussion first focused on the asylum issue and, after 1993, on bills and measures aiming to restrict immigration. Treibel (2001: 115) has described this policy as a way for the state to declare to the resident population with a migratory background as well as to potential immigrants its fundamental position: conditioned ‘toleration’ and maintenance of control for immigrated persons, scepticism and deterrence towards potential immigrants. Some aspects of the amendments also introduced liberal elements, such as the right to naturalise under certain conditions for long-term legal residents and children born in Germany to foreign parents. These aspects, however, remained largely unknown within the public discourse.

Ethnic Germans (Spätaussiedler)

The immigration origins of ethnic Germans, known as Spätaussiedler, changed considerably at the beginning of the 1990s. A predominant percentage began arriving from former Soviet Union successor states, though up until then were primarily German-speaking minorities from Romania and Poland. Due to their high rate of intermarriage and considerable assimilation in the Soviet Union, most immigrating Spätaussiedler lacked

proficiency in German and had no ties to the culture of the traditional German minorities in some Central European countries. In public discourse, these immigrants encountered increasing restraints. Their presumably quick immersion – which generally held true until the late 1980s for the majority coming from Romania and Poland – became seriously challenged. A ceiling to the immigration quota of ethnic Germans had already been provided for as part of the 1992 constitutional amendment compromise. Factual immigration was further limited by slowed processing at the German embassies, and the 2005 immigration law increased restrictions by requiring family members accompanying ethnic German immigrants to prove basic German language skills before immigrating.

Hitherto well-funded integration provisions for ethnic Germans faced serious cuts during the 1990s as well as an institutional resetting. The Federal Commissioner for Ethnic Germans at the Federal Administration Office (Bundesverwaltungsamt), which had been allocated to the Federal Ministry of Interior, was reassigned by the new Foreigners Law. Competences of the Federal Administration Office, particularly regarding integration measures for ethnic Germans, were incorporated into the BAMF.

Labour migration

A significant, yet barely noticed, change in labour migration policy was enacted in 1990. The Anwerbestoppausnahmeverordnung was a decree on exceptions from the halt on recruitment. This change generally went unnoticed by the public; only the contract labour scheme (Werkvertragsarbeitnehmer) triggered a public dispute since these contract labourers were subject to the social security regulations of their country of origin. The unions strongly opposed this programme affecting wage levels and unemployment in the construction sector, and criticised it for being a pilot programme for lowering social standards on the labour market. Further openings for labour migration following in 1991 (e.g. seasonal labour, guest employees from Central Europe, qualified labourers of certain professions, commuters) were less controversial, although they constituted regularised demand-driven immigration for the first time since 1973, since these groups were included into the German social security system. Restrictive amendments to the Foreigners Law of 1997 (see last paragraph of section 2.3) were barely picked up by the general public discourse, though did create considerable disappointment and some bitterness among residents with a migratory background.

With regard to immigrant inclusion, the 1990 Foreigners Law introduced for the first time a right to naturalise that was not under discretion of the foreign authorities. Nevertheless, the still restrictive naturalisation policy on the integration of resident families with a migratory background had an impact that could no longer be ignored. After the national election

campaign of 1994, the conservative government promised a reform of the citizenship law as a measure against xenophobic violence. It was not implemented, however, due to the impracticality of the *Kinderstaatszugehörigkeit* proposed by the conservative Bavarian government, providing for a kind of limited citizenship for foreign children born in Germany. When the Social Democratic-Green coalition came to power in 1998, one of its first activities was to amend the citizenship legislation (May 1999). The governing coalition introduced *jus soli* for children of foreigners born in Germany and reduced the 1992 *jus domicilii* regulation's requirement from fifteen to eight years of legal residence. Originally, dual citizenship should have been accepted as a rule for first and second generations. This intended regulation was exploited by the conservative CDU in Hesse's 1999 election, starting a massive campaign against dual citizenship. This campaign, which mirrored the population's xenophobic mood, contributed to the CDU coalition's narrow success over the liberals, thus voiding the previous Social Democratic-Green majority in the Bundesrat. Since the amendment needed to pass the second chamber, the dual citizenship regulation had to be removed from the bill. This resulted in forcing *jus soli* children' between the ages of eighteen and 23 to opt for either German citizenship or the citizenship of their parents. The consequences of implementing this rule and its potential constitutional problems are still unclear. Reforming German citizenship law introduced the concept of *naturalisation as an important step for promoting the integration process* into official policy. What's more, it also finally ended a situation in which the number of naturalisations during the first half of the 1990s was exceeded by the number of foreign children born in Germany by over 80 per cent, thus resulting in a foreign population that would grow even at zero net immigration levels.

As with citizenship and naturalisation law, no major changes in official immigration policy took place until the change to the SPD-Green government in 1998. The social integration of resident labour migrants and the second generation, however, had been actively promoted since the early 1970s by numerous institutions, namely, large publicly funded welfare organisations known as *Wohlfahrtsverbände*,² local communities and local labour administrations (who oversaw the incorporation of integration measures into the labour market). During the 1990s, these programmes offered a broad scope of services for migrants such as community-related social work, counselling by social education workers notably for migrant families and young migrants, health care, support for transitioning onto the labour market, language acquisition, counselling for drug addiction, support for adolescent criminal offenders on probation, school and career counselling as well as vocational training. In most cases, these services were not explicitly directed towards migrants, though happened to have a large share of resident migrant population among their clients. Programmes at the local

level have made an important contribution to the integration of the migrant population and helped in the prevention of conflicts. An analysis of the extent to which the services are used showed that annual expenses amount to a € 70 million minimum (1999-2000) just for measures explicitly directed at the foreign migrant population and implemented by Wohlfahrtsverbände; actual efforts have been considerably higher since this calculation could not include measures funded by local communities or implemented by other organisations. The total spent only by Wohlfahrtsverbände for specific migrant integration measures summed up to a minimum of 158 million per year (Bosswick 2001: 46). The decentralised integration activities by welfare NGOs and local communities were widely ignored in the political discourse. Nevertheless, as a result of these massive migrant integration efforts throughout the 1990s, the social integration of second-generation migrant youth has proved adequate enough to prevent riots and major conflicts. Particularly in providing support for transitioning onto the labour market, the German practice has been relatively successful. Still, legal admission and integration in terms of self-identification with the country falls behind other European nations, likely due to Germany's restrictive citizenship practice (Heckmann, Lederer & Worbs 2001: 16).

With the enacting of 2005's new migration law, the BAMF took charge of issuing guidelines for integration measures. The obligatory 600 hours of language training required of newcomers came to be implemented by local providers, comprising over 5,000 institutions. To a large extent, it was welfare organisations and private institutions that provided language training in the previous regimen, mainly being funded by the Federal Labour Office in the form of courses for unemployed foreigners. The new market, however, also attracted new providers, such as schools for Russian-speaking relatives of ethnic Germans. Although the funding guidelines of the BAMF forbade ethnically homogenous classrooms, the new providers often specialised in the instruction of Russian-speaking participants from their community, using Russian language to a certain extent during the training. In 2006, a major evaluation of the language course programme prescribed by law was implemented. Results have only partly been published at the time of this writing, though the low numbers of participants passing final exams point to the new programme's limited effectiveness. The BAMF also started several pilot programmes for integration measures at the local level, cooperating with cities and welfare NGOs with long-standing experience in integration programmes. The traditional separation of integration programmes for ethnic Germans, guest worker families and recognised asylum holders was, to a certain extent, abolished under the new regulations, since the BAMF now also oversees ethnic German immigrants and their relatives.

Since the period 1998-2000, the discourse on migration issues changed considerably within the national policy. This has led to a series of political

actions and legal amendments (see Table 3.1). One of the most relevant events was the introduction of a so-called 'green card' for recruiting foreign IT experts, as first announced by Chancellor Schröder at Hanover's CeBIT computer expo in March 2000 (Curle 2004: 21f). The proposed regulation was more like those specified by the United States' H-1B visa, rather than being comparable to the American Green Card. And although the German green card did not substantially exceed exemptions for specific professions from the general halt on recruitment that was in force since 1991 (Anwerbestoppausnahmeverordnung), this proposal had a massive side effect. Public discourse on immigration took a sharp turn from its restrictive tendencies – with the perception of immigration as a burden – towards the notion of immigration as an important resource in global competition. To its surprise, the conservative mainstream faced harsh criticism from the industry sector, now adjusting its once very restrictive position to demand liberal immigration regulations. It was clear there was a departure from the prominent paradigm *Deutschland ist kein Einwanderungsland* ('Germany is not an immigration country') (CSU position paper 23 April 2001). This CSU position paper, however, marked the beginning of an almost four-year struggle over German migration policy between the conservative CDU and CSU parties and the governing SPD-Green coalition. While the coalition held a majority in Parliament, its lacking majority in the Bundesrat resulted in the new immigration law coming to a deadlock. In this period, the most prominent actors such as the industry sector, employers, unions, churches, welfare organisations and other major NGOs mounted pressure on the conservative parties, getting them to agree to a new law in 2005.

This kind of society-driven development of national policies was also observable in the German education system. Because of a federal-based discretion on education issues, a comprehensive national school strategy was missing for years. Educational fragmentism became a national matter only recently due to European-wide harmonisation and the 'PISA shock'. In 2000 and 2003, results from the international comparative study entitled the Programme for International Student Assessment (PISA) exposed the low ranking and subsequent poor support that migrant children were receiving in the German educational system. The study showed that in no other comparable country, worldwide, did the academic success of students depended as heavily on the income and education of their parents as it did in Germany. Researchers concluded that Germany's schools fail miserably at supporting the children of migrant workers and immigrants. According to their findings, a child in Germany born to parents with a degree from a German university has more than three times the opportunities to obtain a high school diploma than the equally gifted child of a migrant worker or an immigrant. The strikingly poor language proficiency and generally poor educational performance of pupils with a migration background across the

country have encouraged local schools to highlight the limits of federalised education and demand effective diversity policies. At the same time, German education policies have faced increasing pressure from EU directives to 'Europeanise'. The recent combination of bottom-up and top-down pressures has thus come to engage national politicians in the subject (Kellner & Strunz 2006; Migration und Bevölkerung 2002, 2003, 2006a; Özcan 2005).

Asylum

Since 1987, the conservative government made the argument in several national and state election campaigns that rising numbers of asylum seekers could only be stopped by an amendment to the Constitution (Grundgesetz, GG). According to them, the opposition's refusing to vote for the required two-third parliamentary majority hindered the government from solving what had become a serious problem. Steeply rising application figures at the beginning of the 1990s compelled the government and the media to portray the state of an emergency. In the face of political pressure and an escalation of violence, the Social Democratic opposition finally agreed on a compromise to amend article 16 (2) as part of a whole package of other regulations concerning policy on foreigners. An important reason for this fundamental shift in the opposition's stance was the massive pressure felt within the party from local communities coping with the problem of inadequate resources for taking care of asylum seekers en masse. Although amendment of the GG raised some criticism among intellectuals and Social Democrats, the general public believed the problem was solved, and the capacity politicians had for dealing with high asylum seeker numbers seemed to be restored. A sharp decrease in applications and a considerable increase in expulsions gave the public the impression that the amendment had been the key element in ending the emergency situation. There are strong indications, however, that the amendment merely played a minor role (Bosswick 1995: 328), constituting a case of symbolic politics on an old conflict line within the German political discourse: ethnic nation-state versus republican constitutional patriotism (Mommssen 1990: 272). The level of xenophobic attacks, however, remained high compared to the figures before the asylum debate escalated in 1990.

Although the amendment had created a *cordon sanitaire* for legal access to asylum with its safe third country rule – and applications had, by 1995, already fallen below their level in 1989 – German asylum policy perpetuated a very restrictive course in the ensuing years. Unlike prior decades, the high courts generally supported this policy. Due to the low asylum application figures and minimal recognition rates, this policy focused on repatriation and deportation. In 1996, approximately 345,000 war refugees from Bosnia-Herzegovina lived in Germany. Because the 1992 *Parteienkompromiss* ('party compromise') regulations on war refugees

(§ 32a AuslG) were not implemented – due to conflicts between the federal and state governments about funding under their envisioned temporary residence status – some 80 per cent of the refugees only obtained a ‘toleration’ status (Lederer 1997: 309). After signing a readmission agreement with Bosnia in November 1996, an intensive repatriation campaign was launched in the following year. Applying a certain amount of pressure for voluntary return, the programme resulted in repatriation of approximately 250,000 refugees to Bosnia-Herzegovina up until autumn 1998 (see Schlee 1998). For Albanian refugees from Kosovo, a general readmission agreement was signed on 10 October 1996 by the German and Yugoslavian governments (Lehnguth 1998: 362ff); expulsions (mostly of criminal offenders) continued until 8 September 1998, when the EU embargo impeded deportation via Yugoslavian airlines. In mid-1999, approximately 180,000 ‘tolerated’ Albanians from Kosovo still lived in Germany, most of them having entered illegally (Lederer 1999: 35). Both groups of war refugees from former Yugoslavia were effectively excluded from access to asylum and were in their vast majority locked in a precarious ‘tolerated’ status.

From the beginning, Germany was an important actor in work towards EU-level migration policy (e.g. the Saarbrücken Agreement with France on border controls of 13 July 1984, leading to the Schengen I agreement of 14 June 1985). The free movement of persons within the EU for migration and asylum policy had implications that quickly became apparent, thus leading to a multitude of intergovernmental working groups (Guild 1999: 317f) and the Schengen II and Dublin agreements in 1992 that explicitly regulated asylum matters within the EU. The Treaty of Maastricht, signed on 7 February 1992, summarised asylum and migration matters within the ‘third pillar’ – the intergovernmental level. Although article K.6 of the treaty provided for a duty to inform the European Parliament, member states’ ministries of interior effectively continued to exclude national and European parliaments from their activities until 1995, a habit that was sharply criticised (Tomei 1997: 47f). Until 1995, very little information was accessible concerning asylum policy within the EU. In 1992, the German government could thus present the Schengen and Dublin agreements as allegedly requiring a change of German asylum legislation. This is an example of a tendency described by De Lobkowicz (1996: 52): countries are seen using their EU membership as a justification for introducing certain executive measures to the European Parliament and the population.

Since the second half of the 1990s, asylum ceased being a topic of major public debate in Germany. Quite a consensus for restrictive policies dominated the political discourse. The Red-Green Coalition Agreement of 20 October 1998 mentioned only a few points of asylum matters under heading IX ‘Security for all: Strengthen citizens’ rights’, point 6 (on common European asylum and migration policy based on the Geneva Convention, burden-sharing) and point 7 (on examination of the detention for

expulsion's duration, the appropriateness of the airport procedure, stay permit regulation for long-term 'tolerated' foreigners and gender-specific asylum claims) (cited in Pro Asyl 1998a). German human rights organisation Pro Asyl published a highly critical analysis of this coalition agreement (see Pro Asyl 1998b).

During the struggle for the new immigration law that came into force in 2005, several initiatives were launched to regulate the precarious situation of about 250,000 foreign residents. These persons held toleration status, *Duldung*, which usually must be renewed every three months, does not grant access to the labour market and limits freedom of movement to the local district. 'Toleration' is not a legal residence status, but a suspension of deportation only due to humanitarian or impracticability reasons. Though the new immigration law abolished its established denial of temporary residence statuses while repeatedly issuing short-term tolerations known as *Kettenduldungen*, the local foreign authorities continued this practice. By applying such restrictive interpretations, they ignored the intention of the legal amendments. Several attempts to find an agreement for issuing legal residence status to long-term migrants who were in fact already quite integrated failed; at meetings of the ongoing conference of regional ministries of interior, no compromise could be found. In December 2005, a bill issuing permanent residence status for a share of the 200,000 'tolerated' refugees in Germany was supported by several NGOs, churches, welfare organisations, unions, the SPD and the Green parties as well as Federal Commissioner for Integration Maria Böhmer (CDU) and the *Länder* of Hesse, North Rhine-Westphalia and Berlin. The bill died, however, due to opposition by the *Länder* of Bavaria, Saxony and Lower Saxony, which were ruled by the conservative CDU-CSU.

A small albeit relevant abolishment of restrictive practices in asylum policy was made. On the last day of the deadline for implementing the EU Asylum Directive (see Bundesamt 2006), the BAMF issued administrative regulations for the recognition of refugees. These regulations finally implemented corrections to some very restrictive decision-making and court-ruling practices frequently challenged in previous years. Presumably, the conflict observed in German politics regarding these practices led to political compromises behind the scenes, influencing the formulation of the EU asylum directive.

The European context

Germany's actions at the EU level towards Central European countries pertain to three main areas. These are the harmonisation of asylum rights, border control and readmission, and burden-sharing within the EU.

A notable step in Germany's harmonisation of asylum rights was support of the deviant interpretation of the Geneva Convention's definition of 'refugee', as stated by the EU Joint Position on 4 March 1996 (Guild 1999:

331). In fact, the definition had already been applied by German courts beforehand (see Zimmer 1998). Harmonisation within the EU also refers to cooperation between the national asylum authorities; in September 1994, the German Bundesamt started meeting with French, Belgian and Dutch authorities, which led to the regular interchange of staff members as contact officials (Bartels 1996: 72f). Since 1996, such working-level cooperation with other authorities has been also expanded to different Central and South-Eastern European countries. Bulgaria, Lithuania, the Czech Republic, Slovakia and Poland were pushed to set up asylum regimes that would withstand the criteria for the application of the 'third safe country' rule (Lavenex 1999: 87ff, 156f).

Regarding readmission agreements and border control, Germany took a leading role within Europe towards its Eastern neighbours. It supported Central European countries' tightening of border controls vis-à-vis their Eastern neighbours and initiated the Budapest Process, which – although dealing primarily with the prevention of illegal migration – also affected the European asylum regime (ibid.: 102ff).

Institutional setting in the 1990s

Since Germany's reunification, competences for migration and integration policies have been reallocated several times.

The Ministry of Interior presently oversees various charges. These include the Foreigners Law and its implementation, border security via the Federal Border Police and asylum and asylum procedure via the BAMF, who cooperate with the *Länder's* ministries of interior and a permanent working group of their experts on asylum policy (ArgeFlü). The local foreign authorities are in charge of deciding the residence status of foreigners, according to the Foreigners Law, and also process naturalisations; they are governed by their regional *Länder's* ministries of interior.

Until 2005, the Ministry of Labour and Social Affairs was in charge of the existing remnants of the guest worker programme. These included measures for unemployed foreign workers (e.g. language training, integration courses) and labour migration (contract workers, seasonal workers and those under the new guest worker programme were all exemptions to 1973's halt on recruitment issued by the Anwerbestoppausnahmeverordnung in 1991; and IT experts who came in on the green card programme of 2000). The local offices of the Ministry of Labour were also in charge of checking the requirements for a work permit that are examined in a process independent of the residence status determined by the local foreign authorities. The Federal Commissioner for Foreigners' Issues, known as the Bundesausländerbeauftragte, belonged to the Ministry of Labour and Social Affairs. Up until 2005, counselling for former guest workers and their families was financed 50 per cent by the Federal Ministry and 50 per cent by the State Ministry for Labour and Social Affairs, known as the

Ausländersozialberatung. Several additional programmes for migrant integration were funded by other sources. In the course of the new Foreigners Law, the ministry transferred several responsibilities in the field of integration policies to the new BAMF, which reports to the Ministry of Interior.

The Ministry of Family, Seniors, Women and Youth (BMFSFJ) is in charge of the integration of resident children and young people with a migratory background and/or foreign citizenship. This provision follows the Kinder- und Jugendhilfegesetz, a federal law on the welfare of children and young people that regulates the duties and obligations of public authorities to support families and minors in general – though it is not specifically aimed at migrants, there are some singular exceptions of targeted projects for migrants. In 2002, the office of the Federal Commissioner for Foreigners' Issues was transferred to the BMFSFJ and renamed the Federal Commissioner for Integration and Refugees. Under the new conservative-Social Democratic coalition in 2005, the Commissioner for Foreigners' Issues was transferred to the chancellor's office and received secretary of state status, a considerable expansion of its political weight. Having replaced the Green Party's Marieluise Beck, the officer for Migration, Refugees and Integration Böhmer appointed by the conservative-Social Democratic coalition belongs to the CDU. This officer, however, had no record of migration and integration policy experiences, having left implementation of these policies for a long time largely to the BAMF's expansion strategy in the domain of the Ministry of Interior.

Other ministries involved were the Ministry of Exterior, which issued visas for family reunion and ethnic Germans as well as produced reports on the situation in refugee-generating countries. Competences in the field of visa-issuing were limited by a requirement to consult the Ministry of Interior under certain conditions, following a scandal regarding fraudulent visa applications in the German embassy to the Ukraine.

The Ministry of Education and Research is, to a minor degree, involved in issues concerning the support of pupils with a migratory background, but its competences vis-à-vis the *Länder* policies on education are very limited.

These rearrangements of competences on migration and integration policies at the national level – namely, the new BAMF for integration policies in Germany – constitute a major change in implementation. This particularly concerns integration measures, which until 2005 were largely up to German welfare organisations and the local level, namely the cities. Through its activities, the BAMF cooperates with institutions at the local level, though one can expect its responsibility for coordinating integration policies to have increasing effect at the national level. In the field of language and integration courses, this process has already significantly progressed. At the same time, many cities started initiatives to improve coordination of integration measures by rearranging competences for

integration-related policies at the local level. Similar to several other European countries and the European Commission, Germany follows a clear trend: shifting competences to the Ministry of Interior as well as emphasising traditional security policy approaches in dealing with migration and integration. For integration policy, this may well be problematic, as the main challenges seem to be located in family and education. For the latter, competences remain at the state ministries of education or family and youth (notably, integration measures at kindergartens), which have continued to resist major harmonisation initiatives for reforms at the national level.

Civil society actors

As recent interviews conducted by the authors of this chapter revealed, the direct impact of civil society organisations on migration policymaking in Germany remains limited. This does not mean, however, that these German organisations do not engage in open communication channels to address national policy arenas. To the contrary, attending practitioner meetings and hearings on migration- and integration-related issues in Berlin – not always by invitation – has become a very relevant part of such organisations' activities. Almost each representative of the civil society organisations³ interviewed for this research stated that his or her organisation was invited by the Süßmuth Commission or a single national political party to give concrete input on migration law questions and related conceptual issues. That most of these organisations have expanded their representation in the German capital is an indicator of NGOs' commitment to policymaking in this field.⁴ Despite enjoying proximity to national policy arenas, the power held by civil society organisations (including charities, churches and trade unions) to influence recent migration policy developments shows certain limits. Throughout the 'Germany is not a country of immigration' mantra ruling national politics for almost 50 years, NGOs were in fact the main actors responsible for integrating migrants into the 'host society'. Why is it, then, that German NGOs have not made a greater impact on policy formulation processes at the national level? Are their practical experience and thematic expertise simply denied? Are they ignored as highly relevant actors?

This does not appear to be the case. As interviews with the organisations revealed, civil society representatives were – and frequently are – invited to national hearings on migration- and integration-related policy issues. The Süßmuth Commission, in particular, is recognised as a parliamentary group giving special attention to the professional proposals brought forward by various civil society interlocutors. Interviewees themselves stated that certain aspects of their own approaches towards a cohesive German immigration society have been integrated into the commission's recommendations after they were submitted to then Minister of Interior Schily.

And though expertise and strategies for a comprehensive migration and integration policy have been mobilised – to the point of entering the public discourse – one can nevertheless observe a pertinent reluctance to incorporate effective diversity management tools in the national legislation. In addition, the seven years following 2000 show a shifting of integration measures from the welfare policy context to one of control. This was expressed by substantial federal cuts in funding for *Migrationssozialberatung*, NGOs providing social counselling for migrants, while the expanded language training and integration course programmes controlled by the BAMF became obligatory in many circumstances.

Not surprisingly, civil society representatives unanimously pointed to one major actor responsible for this trend: the federal and state ministries of interior, who were reluctant to dismantle the right of residence from Sicherheits- und Ordnungsrecht, the German security and policy law. In addition, interviewed civil society representatives identified a general inclination to prevent further immigration into Germany and preferably repatriate foreign nationals to their country of origin. Interestingly, this attitude of the German Ministry of Interior towards migration seems to persist over time. Neither changes by the ministers in charge nor innovative elements to German migration law (like elements of *jus soli* introduced into the Nationality Law in 1992 and 2000) seem to disturb this scheme or disrupt the traditional policy trajectory. Instead, a relevant restoration took place with the 2007 amendments to immigration law regarding naturalisation (these amendments require command of German at a quite demanding level and they void exemptions for the naturalisation of people under age 23 with regard to welfare dependence). To a certain degree, the changes revoke the 2000 tendency to see naturalisation as an important step for the integration process, and restore the notion of naturalisation as the final step of successful integration.

As such, the NGO representatives who were interviewed for this research said they saw the National Integration Summit, first held in 2006 with a follow-up event in 2007, as exceptions to the general trend. They considered the positive messages sent out by these events to be counteracted by strong restrictive signals from the ministries of interior during the same period. Introduced were language tests for foreign spouses pursuing family reunion and for naturalisation, an integration course and test (on knowledge of German history, politics and legal structures) for naturalisations not under the authorities' discretion and sanctions resulting from incomplete course attendance or failing a final test. Different from 2004's integration course programme, the new regulations of 2007 focused on the second part of the often mentioned phrase *fördern und fordern* ('supporting and requiring'), thus demanding that long-term resident migrants adapt to the nationally unified language training and integration course system, including passing its final tests.

A positive development in this field, civil society organisations described German city and municipality governments as having responded to the needs of integrating migrants long before the issue reached the national political agenda. Local governments, it seems, have shown a more flexible approach to matters of migration and integration. In terms of effectively and accountably governing migration, they shifted from executing national guidelines to actively formulating policy aims. New forms of diversity management are thus rising at the local level, also being disseminated as models to other local contexts through the *Deutscher Staedte- und Gemeindebund*, a German federation of cities and towns. Another aim is to address policy formulation at higher institutional levels, i.e. the *Länder* and the federal government. These bottom-up initiatives are particularly welcomed by civil society organisations, concluding that a wide coalition is necessary to trigger responses from the federal government. The Federation of German Trade Unions, for example, has repeatedly collaborated with employers associations as well as Caritas to promote cases related to migration and integration policy.

The need to support policy proposals with a broad basis of civil society associations has led to coordinated action (and political clubbing). As one interviewee pointed out, joint statements and positions of civil society associations working on migration and integration are negotiated and formulated at meetings of the anti-racism organisation *Forum Gegen Rassismus*, the human rights organisation *Forum Menschenrechte* and various bi-organisational group meetings. Together their goal is to enhance the effectiveness of policy proposals. Cooperation is also seen in concrete exchanges, such as Caritas and the Federation of German Trade Unions sharing counselling documents for migrants. These joint efforts from civil society associations also became visible in a common position paper that the Federal Commissioner for Migration, Refugees and Integration signed on 28 October 2003 together with the BAGFW (see *Bundesbeauftragte/BAGFW* 2003), a reunion of top German welfare associations including the German Workers' Welfare Association (*Arbeiterwohlfahrt*), Caritas Germany, the German Paritetic Welfare Association (*Paritaetischer Wohlfahrtsverband*), the German Red Cross, the German Protestant Church (*Diakonisches Werk*) and the Central Welfare Department of the Jewish Community (*Zentrale Wohlfahrtsstelle der Juden*). In this paper, the associations focus on the challenges of a modern integration policy for Germany and formulate a common rights approach for integrating migrants. Equal opportunities, social justice and civic participation, they state, are basic values of society that should be applicable for all people permanently residing in Germany.

4 Conclusions

An implicit assumption of this chapter is that there has been consistent migration to Germany since after World War II. Throughout its migration tradition, historical events and political provisions mark turning points in the quantitative and qualitative development of migration and how politics has handled related issues. Events and legal provisions have been influenced by different systemic, cultural and political factors.

An influx of migrants after the end of World War II, as well as the immigration of refugees from the former Yugoslavia in the 1990s, appear to be systemic factors that affected migration policy development. Those inflows catalysed rapid changes in the populations at the time and exercised pressure on local asylum shelters. In comparison, new challenges generated by 9/11 have had sustained impact on German national politics, rather than necessarily reflecting the *de facto* situation in the country. At the time of this writing, Germany has not experienced terrorist acts like those befalling the US, the United Kingdom and Spain, and potential confrontations between Germany's Muslim and Christian populations have mainly appeared non-violent thus far. Nevertheless, the supposed threat of Muslim fundamentalism has interfered in national policymaking. Minister of Interior Schily's proposal for a new foreigners' law in 2001 was likely complicated because of a general conflation of Muslim migrants with terrorism, something that eventually polarised political parties and individuals. In this rigid situation, actors of a primarily non-political nature, such as economists and civil society associations, seemed to be the trailblazers, forcing the German political system to take concrete actions to reach a compromise.

Besides these systemic factors, further analysis points to cultural factors constituted by Germany's reunification in 1990, which led to a new conceptualisation of the nation-state. Up until 1990, *jus sanguinis* characterised German citizenship law, which, in turn, dated back to 1913 when it was enforced to provide permanent citizenship for descendants of Germans born in the colonies (Oberndörfer 1989: 7). The ethnic nation-state, a concept stemming from the early nineteenth-century German Romantik – being a deliberate dissociation from the French republican idea of the nation during Napoleon's occupation – had far-reaching consequences. Germans in an ethnic sense, particularly German minorities in several Eastern and Central European states, were entitled to German citizenship when migrating to Germany. Meanwhile, inclusion into a nation – which understands itself as a community of descent and culture – via naturalisation was defined as an *exception to the rule*, if not denied altogether (Heckmann 2001: 16). After the Nazi experience and establishment of the FRG, conception of the ethno-centric nation-state was replaced by the concept of *Verfassungspatriotismus* – patriotism referring to the values and

norms of the constitution – and ultimately amended by law in 1990 (MommSEN 1990: 272f).

Germany's reunification impacted the profile of German politics significantly. This was important for a country aiming to establish itself as a partner with equal footing on the international platform. Another important turn in migration policy occurred in 1998, when the change in government seemed to mark the end of two decades of stagnating policy characterised by the paradigm 'Germany is not a country of immigration'. A generic party change allowed a pro-immigrant lobby of economic associations and civil society organisations to gain influence on national policy formulation. For the first time ever, in 2000, the new German citizenship law introduced into official policy the concept of naturalisation as an important step of the integration process.

Still missing from understanding how international factors have impacted the policymaking process is a comprehensive analysis of how European provisions are implemented into German national law. Still, the influences of Europeanisation are clearly recognisable. In November 2006, Chancellor Merkel (CDU) and Vice-Chancellor Franz Müntefering (SPD) declared their favour of introducing obligatory German language courses and tests for *all* children between four and five years old. Since publication of the first PISA test results in 2000 – and notably, the PISA special study on immigrant students from 2003 – poor educational performance of pupils with a migration background has been a constant concern in Germany's public debates. Related discussions intensified in early summer 2006, when teachers at Berlin's Rütli School resigned, stating that their pupils' aggressiveness and poor German language proficiency made teaching impossible. Yet, political actions in response to these issues, such as the obligatory language certificates formulated by Merkel and Müntefering, must be applied to *all* pupils – not just those of a migratory background – to avoid contradicting the anti-discrimination directive of the European Commission, which Germany did ultimately ratify (Bullion & Ramelsberger 2006; Kellner & Strunz 2006; Migration und Bevölkerung 2002, 2003, 2006b, 2006c; Özcan 2005).

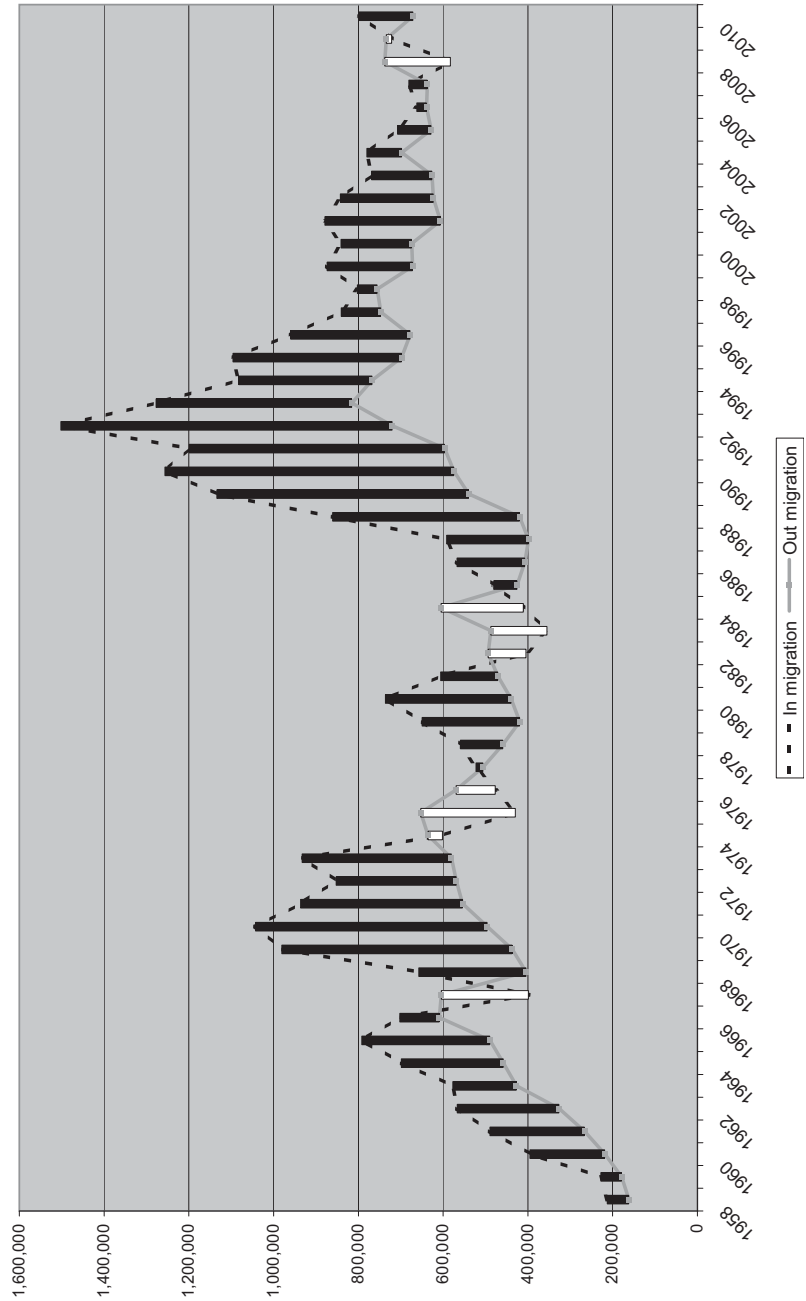
In conclusion, one observation has yet to be discussed: national politics' delayed reaction to local developments and the consequent needs urging governments and associations to find innovative, often independent strategies to tackle migration challenges. For 50 years, Germany's migration history has been a paradox: a nation reluctant to consider itself a country of immigration while, at the same time, being one that responds pragmatically to migrant needs at the local level. The contradiction has caused frictions, created dilemmas over competences and encouraged the formation of self-referent domains of migration management within one country. The two policy cycles (migration policies and integration policies) functioned in parallel. Although the actors in these domains consulted each other, the

situation as a whole resulted in a certain political inertia. Only after 1998's government change did Germany's official migration and integration policy seem to get mobilised.

For a long time indeed, migration policymaking was heavily influenced by being used as an instrument for political mobilisation in election campaigns, predominately by the conservative parties tending to pre-empt positions otherwise exploited by right-wing parties. It seems this power struggle has been exacerbated by the lack of official migrant policies over several decades and a political discourse dominated by the asylum issue and restrictive agendas. Events like 1998's change of government and 9/11, along with processes such as Europeanisation, changing demography and ethnic diversification, have stimulated more and more political interest in diversity matters. Once the topic reaches the official agenda, it is unlikely to disappear, though Germany's struggle to implement an effective diversity policy has yet to begin. Still, on the scientific side of things, solid empirical data is lacking to explain the manifold connections, interactions and interferences between policy cycles and political actors.

It does seem that a half-century of post-war immigration history had to pass before Germany's first comprehensive migration law could come into force. Though its migration and immigrant policy has always been conflict-prone, Germany has also long dealt with a strange mismatch between its *de facto* challenges and political responses often amounting to policy that is merely symbolic. This pattern cannot be only explained by referring to the instrumentalisation of migration policy issues for the struggle among political parties. To a certain degree, this debate has also been fuelled by historical conflicts over the self-perception and self-identification of the receiving society itself. In the case of Germany, the struggle surrounding article 16 of the GG can be interpreted as a projection of self-identification questions (ethnic nation-state in opposition to republican constitutionalism) onto specific subgroups of the resident population. That is, those with a migratory background, who are excluded as non-member denizens. This pattern obviously leads to dysfunction over time. The demand for integration emerged as a new, albeit only temporary consensus in German immigrant policy. Contemporary disputes on integration policy and naturalisation requirements, however, show complex conflict lines among the various *Länder*, between national and *Länder* levels and across local governments, especially in major cities with extensively developed inclusion programmes, which tend to be counteracted by their respective *Länder* policies. The immigrant incorporation spectrum ranges from rigid assimilation combined with threatening sanctions to revised pluralist approaches of multiculturalism, such as diversity policy. Although some old conflict lines re-emerge, the new dispute on migrant integration seems more closely related to everyday practices within the receiving society itself and strongly linked to practical issues of policy implementation at the local level. Thus,

Annex 1 Figure 1 *Germany's in migration and out migration, 1958-2010*



Source: Federal Office of Statistics

Annex 2 Table 1 *Immigration to Germany by country of origin, 1990-2005 (thousands)*

Country of origin	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	2001	2002	2003	2004	2005
Poland	301	146	144	82	88	100	91	86	82	90	94	101	101	105	139	159
of whom Germans	100	17	12	7	9	12	14	14	16	18	20	21	20	17	15	12
Yugoslavia	66	223	267	142	63	54	43	31	60	88	33	29	26	22	21	17
Russia			85	85	103	107	83	67	59	68	72	79	77	67	59	43
of whom			60	56	70	74	51	42	37	40	40	42	42	36	31	21
Germans																
Turkey	85	83	81	69	65	75	74	57	49	48	50	56	59	50	42	36
Kazakhstan			87	107	131	123	98	83	56	54	55	53	46	33	25	15
of whom			80	86	106	100	80	69	46	42	43	41	34	24	18	10
Germans																
Romania	174	84	121	87	35	27	19	17	18	20	25	21	25	24	24	23
of whom	96	23	11	5	3	2	2	2	1	1	1	1	1	1	1	1
Germans																
Italy	40	38	33	34	41	51	49	42	38	37	35	32	27	24	21	20
Other	590	625	685	672	555	559	502	458	440	468	476	445	482	445	450	393
Total	1,256	1,199	1,502	1,277	1,083	1,096	960	841	802	874	841	879	843	769	780	707
of whom	274	291	291	288	305	303	252	225	197	200	192	194	184	167	178	128
Germans																

Sources: Federal Office of Statistics

Notes: Yugoslavia since 1991 includes Croatia, Slovenia, Bosnia-Herzegovina and Macedonia; since 1992, Serbia, Macedonia and Montenegro; since 1993, Serbia and Montenegro.

Data for Russia and Kazakhstan are included as of 1992.

Empty cell indicates no data available.

it could be considered a progressive problem shifting, from an ideological sphere to a more pragmatic dimension. In this sense, valuing bottom-up initiatives in the policy field may also contribute to the formation of a common European society.

Notes

- 1 In the aftermath of World War II, Germany was divided into four zones. In 1949, the three western zones became the Federal Republic of Germany (FRG) and the sole eastern zone became the German Democratic Republic (GDR).
- 2 These include Caritas, which is Catholic, Diakonie, which is Protestant, labourers' association Arbeiterwohlfahrt and, later on, the independent NGO umbrella organisation DPWV, the German Red Cross and the ZWST comprising Jewish communities.
- 3 Among the German civil society organisations interviewed were Diakonie, Caritas, AWO (a labourers organisation), Paritätischer Wohlfahrtsverband (an association of charities) and the Federal Trade Union.
- 4 One interviewee saw the centralisation of policymaking in the German capital as creating a bias in the decision-making processes. He stated that national politicians tend to overlook positive integration trends that occur in smaller villages and rural areas outside Berlin.

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4 The case of the Netherlands

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1 Introduction

In the post-war period, the Netherlands regarded itself an ‘overpopulated’ country. Both public opinion and government documents explicitly stated that the Netherlands was not – and should not become – an immigration country (Ministerie van Sociale Zaken en Volksgezondheid 1970). To the contrary, emigration was openly encouraged through government policies and, between 1946 and 1972, more than half a million Dutch citizens emigrated to countries such as Canada, Australia and New Zealand. Nevertheless, during that same period, the Netherlands did in fact become an immigration country. Migration statistics show that from the beginning of the 1960s, with the sole exception of the depression of 1967, the country’s net migration balance was consistently positive until 2004, with immigrants arriving in different periods and for various reasons.

This chapter begins with an overview of migration waves to the Netherlands, provided more or less in chronological order. Following the introduction, the second section describes the evolution of Dutch immigration and integration policies over the years. The third section reconstructs the processes of immigration policymaking, while the fourth section deals with integration policymaking. The analysis considers the different processes, actors, levels and governance patterns that have influenced policies in each of these domains. The chapter’s fifth section compares the dynamics of the immigration and integration fields, evaluating their interaction and, in so doing, identifying two types of factors that shape their dynamics. While the fourth section focuses on the internal mechanisms of migration and integration, the sixth section emphasises the role of various external factors such as the welfare state policies, the political framework and the political climate. Finally, the chapter concludes with a summary of the Dutch case’s most salient characteristics.

The first migrants to arrive to the Netherlands were so-called repatriates who came from the Dutch East Indies, or what today are Indonesia and New Guinea. Their arrival was a consequence of the decolonisation process taking place in the former Dutch colonies. In total, this population

was estimated to comprise approximately 300,000 individuals in the years spanning 1946 to 1962. Most repatriates were of mixed Indonesian-Dutch descent, being entitled to settle in the Netherlands on the grounds of their Dutch citizenship. In general, they were well educated and had strong socio-cultural and national orientations towards the Netherlands. Their integration was helped by the active and assimilationist reception and settlement policy that was transpiring under the expanding economy and labour market conditions of the 1960s (Van Amersfoort 1982; Van Amersfoort & Van Niekerk 2006).

In 1951, under pressure of political developments in Indonesia, a second group of migrants arrived to the Netherlands. This group comprised Moluccan soldiers from the former colonial armed forces and their family members. Totalling 12,500 individuals, the migrants themselves and the Dutch government both regarded their stay as temporary because, after all, the Moluccans had intended to return to a free republic of the Moluccas. As such, conditions for this group's adjustment to Dutch society were very unfavourable. Various contingencies included the government's policy to keep the group intact (in view of their anticipated return migration), the group's own seemingly firm intent to return to their native land, as well as their dismissal from the army, low level of education and lack of Dutch language skills (Bartels 1989). Since a free republic of the Moluccas never came to exist, the migrants' desired return did not materialise. In 1978, after a series of violent occupations of buildings and hijackings of trains by Moluccan youth, policy objectives were explicitly altered (Entzinger 1985; Penninx 1979). Social, cultural and political orientations among Moluccans also changed (Bartels 1989; Steijlen 1996; Smeets & Steijlen 2006). Today, Moluccan immigrants and their descendants in the Netherlands are an estimated population of 42,300 (CBS 2002: 15).

The post-colonial migrations described above were followed by demand-driven labour migration from the late 1950s on. Already by the mid-1950s, post-war reconstruction efforts started to produce labour shortages in certain sectors and guest workers were recruited to fill vacancies. Most were jobs for unskilled or low-skilled workers: first came Italians, followed by Spaniards and Yugoslavs and, still later, Turks and North Africans. The first oil crisis of 1973 led to a factual recruitment stop for workers, though this did not mean a decrease in immigration. Although return migration for Italian, Spanish, Portuguese, Greek and Yugoslav migrants was quite high during the 1970s, the Turkish and Moroccan response differed. From the mid-1970s onwards, these workers brought their families to the Netherlands. Meanwhile, from the mid-1980s onwards, other migrants came as spouses for the young Turkish and Moroccan immigrants who had settled in the Netherlands. By 1 January 2006, the number of residents of Turkish background¹ in the Netherlands was 364,300, 54 per cent of whom were born in Turkey (these residents are thus considered first-generation

migrants) and 46 per cent of whom had at least one parent who was born in Turkey (thus being considered second-generation migrants). By 1 January 2006, Dutch residents of Moroccan background were counted at 323,200, 52 per cent of whom comprise first-generation migrants and 48 per cent, second-generation. The large majority of this population had also acquired Dutch nationality.

The next newcomers to the Netherlands were Surinamese. Up until 1975, Surinam formed part of the Netherlands Kingdom and migration was unregulated. Immigration from Surinam intensified from 1973 to 1975, during the years before the country's independence, and again from 1979 to 1980, prior to expiration of the transitional agreement on the settlement of mutual subjects of Surinam and the Netherlands. The political turmoil in Surinam in 1982 and the country's political instability thereafter brought new immigrants to the Netherlands, although at a lower rate than during the aforementioned peak periods (Van Amersfoort & Van Niekerk 2006). The population of Surinamese origin in the Netherlands, as of 1 January 2006, amounted to 331,900, 56 per cent of whom would be considered the first generation and 44 per cent the second generation. A great majority of present-day Surinamese residents have Dutch nationality.

Migration from the Dutch Antilles has not been hampered by regulations because the islands are part of the Netherlands, and Antilleans therefore hold Dutch nationality. Migration movements have long been rather fluid, and return migration among the population is relatively high. As of 1 January 2006, the number of residents of Antillean origin in the Netherlands totalled 129,700. This group's relatively recent arrival is reflected in the high percentage comprising the first generation, at 62 per cent, and a comparatively small percentage comprising the second generation, at 38 per cent.

Since the mid-1980s, admitted asylum seekers and other refugee populations have become an increasingly significant share of the Netherlands' immigrant population. Such groups first began arriving from Vietnam, Sri Lanka and the Horn of Africa, and later, from the Middle East and the Balkans. As of 1 January 2006, admitted refugees and asylum applicants to the Netherlands most frequently came from: Iraq (43,800), Afghanistan (37,200), Iran (28,700), Somalia (19,900) and Ghana (19,500).

In addition to the above-mentioned categories of migrants, other immigrants continued to settle in the Netherlands. As of 1 January 2006, the total number of Dutch residents whose background would be considered one of the EU-25 countries rose to 817,000. The number of residents with a background in one of the so-called 'Western' countries (including those in the EU) is 1.42 million, or 8.7 per cent of the total population. 'Non-Western *allochthones*' numbered at 1.72 million, or 10.5 per cent of the total population.

Despite the fact that since World War II the Netherlands has not regarded itself an immigration country, many immigrants have in fact settled in the nation. In all, there are now 691,500 aliens (i.e. persons not having Dutch nationality) living in the Netherlands (4.2 per cent of the country's total population). Of the total population, 1.6 million people (9 per cent) were born outside the Netherlands; these individuals are considered 'immigrants' in the strict sense of the term. Meanwhile, 3.15 million (19.3 per cent) are, in the broad definition of the word, *allochthones* (i.e. first- and second-generation migrants). These newcomers to Dutch society are scattered throughout the country's geography. To illustrate, in 2000, 40 per cent of all *allochthones* were living in one of the Netherlands' four largest cities (Amsterdam, Rotterdam, The Hague, Utrecht). By contrast, only 13 per cent of the total Dutch population were recorded as residents of these cities. In general, immigrants to the Netherlands have tended to settle in larger cities, most notably, in the western conurbation of the Netherlands (CBS 2001; Garssen 2006: 19).

2 The evolution of migration policies

The fact that the Netherlands did not see itself as an immigration country is manifested in the various ways the nation went about naming factual immigrants. People from the Dutch East Indies were labelled 'repatriates'; from Surinam and the Netherlands Antilles,² 'Kingdom fellows' (*rijksge-noten* in Dutch); and from Southern Europe, Morocco and Turkey, 'guest workers'. This same national self-perception was also expressed in the noted absence of integration policies for alien newcomers throughout the 1960s and 1970s (Blok Commission 2004). Apart from repatriates from the Dutch East Indies who were, after all, Dutch citizens, all other newcomers' stays were seen as temporary, thereby deeming sufficient what were merely ad hoc policies for accommodation and return.

However, the Netherlands' reputation of not being an immigration country contradicted the undeniable fact that large immigrant groups were staying in the nation for long periods of time, if not permanently. This led to mounting tensions in the mid-1970s (Entzinger 1975), and produced a gradual shift in integration policies. Since the beginning of the 1980s, the presence of long-term factual immigrants began to be recognised and it therefore became a major political goal to integrate such individuals into Dutch society. This led to designation and implementation of the first integration policies in the Netherlands, collectively referred to as the Ethnic Minorities (EM) Policy. During the 1980s, EM Policy started, much as it had in Sweden, as a welfare state policy to stimulate equality and equity among a society's vulnerable groups. It was developed in a relatively depoliticised political context and laid down in a number of governmental documents

(Ministerie van Binnenlandse Zaken 1980, 1981, 1983). In its implementation phase during the 1980s, this policy led to significant policy activity across many domains.

Although the presence of large immigrant groups was recognised, immigration was still seen as a historically unique event. It was, moreover, believed that further immigration should be restricted or prevented (Penninx, Garcés-Mascreñas & Scholten 2005). The policy shift towards integration thus did not imply that the current immigration was recognised any differently. Alongside the realisation of integration policies, the 1980s and 1990s implemented and enforced more restrictive immigration policies vis-à-vis labour migration, and later on, family migration and asylum. Since there was no discussion on whether the Netherlands should be an immigration country or not, throughout the two decades, increasingly restrictive immigration policies were formulated and applied in a rather de-politicised context. In other words, compared to integration policies, new immigration regulations were, until recently, passed with little political debate and relatively low implication of different political and social actors.

Towards the end of the 1980s, the public and the political discourses started to look critically at EM Policy. The policy was seen as having failed in important areas of labour and education, while also being criticised for its common concern (target groups and their emancipation) and its 'overemphasis on cultural aspects'. This resulted in the formulation of integration policies throughout the 1990s. The new policy document known as 'Contourennota' (Ministerie van Binnenlandse Zaken 1994) accentuated the individual over the group, emphasised the socio-economic aspects of integration over the cultural and/or religious ones and stressed, more than before, the civic responsibilities of individuals in integration processes. This led to new directions of policy implementation during the 1990s including, among others, a national policy of introductory courses for newcomers in Dutch society and area-based policies (i.e. urban policies).

The beginning of the new century prepared for another shift in policy orientation that was by then embedded in full-fledged politicisation of the topics of immigration and integration. That integration processes and policies had fundamentally failed and that social cohesion of Dutch society had become endangered became the dominant perception. National election campaigns in 2002 framed these topics in advantageously exploitative lights and thus reinforced politicisation of the themes. Only fanning the fire were internationally and nationally scoped events, such as 9/11 and the 2004 murder of Dutch film-maker Theo Van Gogh by a young Dutch-born radical Muslim in Amsterdam. With the formulation of Integration Policy New Style (Ministerie van Justitie 2003), a series of proposals and measures were developed to significantly bring down immigration figures (the Netherlands had a negative net migration balance for the three consecutive

years following 2004), and to introduce mandatory forms of integration for newcomers and oldcomers alike. Some observers have called these practices neo-assimilationist.

3 Immigration policymaking

In contradistinction to integration policies in the Netherlands, immigration policies have been neither comprehensive nor coordinated. This has been due to the lack of a clear policymaking structure, which has thus led to the formulation of labour, family and asylum migration policies by different ministries, institutions and other political and social actors. Also at play have been varying dynamics, all transpiring at distinct moments in time. For instance, while the Ministry of Justice is responsible for general admission of foreigners and the granting of their residence permits, the Ministry of Social Affairs and Employment is assigned to deal particularly with labour migration, and the Ministry of Culture, Recreation and Social Work has competency over reception of asylum seekers. Consequentially, any description of Dutch immigration policy must refer to three distinctly assigned processes: labour, family and asylum. Interactions between these three processes have taken place over the course of time, but their interrelations have neither been stable nor held within a unitary structure. The following sections outline these developments and detail their points of convergence.

3.1 *Labour migration*

By the mid-1950s, the post-war reconstruction efforts of the Netherlands had led to labour shortages in various sectors. This resulted in the recruitment of foreign workers to fill these vacancies, which were mainly jobs for unskilled or low-skilled workers. To this end, recruitment agreements were signed with sending countries such as Italy (1960), Spain (1961), Portugal (1963), Turkey (1964), Greece (1966), Morocco (1969) and Yugoslavia (1970). These arrangements were formulated in consensual agreement among the Ministry of Social Affairs and Employment, employers' organisations and trade unions. As in other Western European countries, social partners and the state generally accepted the fact that continuous economic growth could only be achieved by relying on (presumably) temporary foreign labour.

Recruitment activities came to an end, however, upon onset of the economic recession that followed the first oil crisis in 1973. This was more the result of a lack of employers' interest in new foreign workers than the consequence of an explicit immigration policy (De Lange 2007). Unlike in France and Germany, measures to force migrant workers to return home

were never implemented in the Netherlands. The Dutch government's proposal to introduce a return bonus for those who would return voluntarily was broadly rejected. And while, from 1973 onwards, the Netherlands proclaimed itself closed to labour migration, this declaration was more a matter of rhetoric than factual policy. Labour migration policies (the Labour of Foreign Workers Act from 1979 to 1995, and the Labour of Aliens Act from 1995 onwards) continued to channel the entrance of those workers deemed beneficial to the Dutch labour market. In a new economic context characterised by a loss of employment in industry and a parallel expansion of the service sector, these policies were meant to restrict the entrance of low-skilled foreign workers while channelling that of high-skilled immigrants, often from highly industrialised countries (Böcker & Clermonts 1995).

In contrast to the 1950s and 1960s when corporatist structures were fully functioning, labour migration policies were formulated by the Ministry of Social Affairs and Employment, with little cooperation from trade unions and employers. For instance, the Labour of Foreign Workers Act was passed in 1979 despite criticisms by both employers' organisations and trade unions. The weakening of the corporatist structure allowed Parliament, and hence its vying political parties, to gain clout in labour migration policymaking. The parliamentary discussions on the Labour of Foreign Workers Act of 1979 illustrate how labour immigration policies were increasingly created by the government and discussed at length in Parliament. Unlike previous measures, this new law was widely debated. Left-wing parties, left-wing liberals and the liberal party were opposed to the law, arguing that it would negatively affect the position of foreign workers and institutionalise unequal treatment.

By the end of the 1980s, persistent labour shortages in particular economic sectors forced the Dutch government to deal with the demand for foreign labour in a more structured fashion. As a consequence of this, the Dutch Employment Organisation, together with trade unions and employers, started to manage temporary labour migration through so-called 'covenants'. These tripartite agreements permitted workers in particular economic sectors to be temporarily admitted into the country, while also anticipating the availability of newly trained, qualified Dutch workers. Contrary to what would be expected, however, these agreements did not always lead to more liberal admission policy (De Lange 2004). In terms of policymaking, these covenants reinstated the corporatist tripartite body.

Parallel to measures designed to control the admission of foreign workers, the Dutch government has aimed to reduce irregular immigration since the early 1990s. The Linkage Act (1998) became centrepiece to the principle of an 'integrated immigration policy' (Pluymen 2004: 76). This measure made all social security benefits contingent upon an immigrant's legal residence status, including rights and access to secondary or higher

education, housing, rent subsidy, handicapped facilities and health care. Driving this act was the assumption that exclusion of access to public services would help push back irregular migration.

While previous measures to reduce irregular migration passed with little public discussion, beyond Parliament, the Linkage Act generated widespread protest from doctors, teachers, legal experts, prominent politicians and representatives from a broad range of public, semi-private and private organisations. Representatives of local governments also campaigned against the new law and seemed to steer a course for non-enforcement. In general terms, the new law was claimed to be unnecessary, immoral and unworkable. This general opposition – in contrast to the ramifications of creating other labour migration policies – produced a number of substantial alterations to the bill. For instance, professionals were not forced to report irregular immigrants to the Aliens Department; restrictions concerning education for children were lifted; and whereas irregular immigrants would initially have only been entitled to medical care in ‘acute and threatening situations’, this specification was eventually superseded by the prospect of requiring ‘imperative medical treatment’.

Moreover, in its implementation, the Linkage Act led to the inclusion of other actors. First of all, private actors became master-workers of its implementation, since it was they who were to control the access to social services. Having private actors participate in migration management meant they could simultaneously work to influence the actual process of implementation. For instance, various studies (Van der Leun 2003, 2006; Pluymen 2004) have shown how workers in the domain of social assistance and housing have displayed a much more accepting attitude towards the Linkage Act than doctors and teachers who, in contrast, might tend towards letting their professional ethics prevail over new regulations. Secondly, the exclusion of undocumented immigrants from social services led to the shift of new support activities downwards, both in the direction of local authorities and out to churches and other support organisations. In other words, local funds and churches, societal organisations and private individuals came forward to support irregular immigrants in those services no longer being covered by the Dutch state.

3.2 *Family migration*

Throughout the 1960s and early 1970s, the assumption that labour migration in the Netherlands was temporary led to relatively strict regulations regarding family reunification. Although family immigration was not yet a main preoccupation during the 1970s, when evoked in parliamentary debates, the issue was discussed within a framework of highly moral discourse (Bonjour 2006: 4). In particular, Christian parties regularly emphasised the importance of taking into account the ‘human’ and the ‘social’

aspects of labour migration, referring to the 'forced' separation of guest workers from their families as 'extremely painful' and a source of 'suffering' (quoted in *ibid.*). Despite explicitly voiced concerns over family unity, the government did not alter family migration regulations, arguing that circumstances unfortunately did not allow for less 'strict policies' (*ibid.*: 5).

In response to the first report of the Scientific Council for Government Policy (1979),³ in 1983, the government published a memorandum on minorities. Entitled 'Minderhedennota' (Ministerie van Binnenlandse Zaken 1983), this memorandum accepted the permanency of immigrants' stay as a starting point for integration policies. Protecting the unity of the immigrant family thus went unquestioned. In principle, this new approach made the family part of the integration process. And in practice, family reunification (i.e. the bringing over of spouses and children of resident families) peaked in the early 1980s. When in the same year the Ministry of Justice decided to introduce restrictions to family formation (i.e. bringing over new marriage partners), fierce resistance immediately came from Dutch progressive parties (PvdA, GroenLinks, SP, D66), who argued that the measure undermined the principle of equal treatment at the heart of the new minorities policy. In this regard, liberal family migration policies were part and parcel of EM Policy, particularly when it came to emphasising socio-economic integration vis-à-vis migrants' own cultural identity.

The shift in the early 1990s, however, from a group-oriented approach to one focusing on individual integration, caused a turn away from the principles of protecting family unity. This neglected the family's key role in the development of cultural identity and integration, for the sake of fostering protective measures to promote social cohesion in society (Van Walsum 2002: 143). In other words, family migration started to be seen as a problem for the integration of individuals. This reasoning justified restrictive family migration policies. As presented in the media and stated in many public debates, a broad majority within Parliament believed that, due to a lack of knowledge and skills, those newcomers who immigrated within the framework of family formation or reunification would, if not fail to integrate, at least retard the integration process. A contrast to the early 1980s, in the 1990s and 2000s, more restrictive family migration measures were thus introduced with little debate.

As family migration regulations became more and more restrictive, international treaty obligations, particularly article 8 of the European Court of Human Rights (ECHR)'s European Convention on Human Rights and Fundamental Liberties, became an increasingly important counter reference. To prevent violations to the right of family life, a clause was introduced in 1994 to the guidelines for police officers known as 'Instructions for the Aliens Police'. It stated that the government could – in cases of 'compelling reasons of a humanitarian nature' (cited in Bonjour 2006: 15) – use its own discretion to grant admission to aspiring family members,

even if predetermined conditions went unmet. As Bonjour observed, this demonstrates how ECHR article 8 came to be considered an external constraint on national policy options. Not only was this a contrast to the ethical and ideological considerations presented by Dutch parliamentarians in the 1970s (*ibid.*: 16), but it also introduced an important new, external actor in Dutch family migration policymaking.

The current dominant discourse that family migration is a potential threat for integration is most clearly embodied in a new law passed in 2005. This law requires non-Dutch family members of residents who want to immigrate to pass an exam that tests their basic knowledge of the Dutch language as well as how well informed they are about Dutch society. The exam must be taken in the country of origin and is a requirement for permission to enter the Netherlands on the basis of family reunification. However, a number of recent verdicts by the ECHR pose significant challenges to this requirement. In particular, the ECHR has emphasised the notion that states must allow parents and children the freedom to live together. Moreover, a recent jurisprudence has stressed the need to respect the right of both married and unmarried couples to continue cohabiting, even when issues of immigration or public order are at stake (Van Walsum 2004). What can thus be concluded is that family migration policymaking has gone beyond the scope of the Dutch political arena, bringing in the EU and international human rights organisations as potentially important actors.

3.3 *Asylum migration*

Asylum policies in the Netherlands have been developed, mainly on an ad hoc basis, following the increase of asylum seekers during the 1980s and 1990s. From 1977 to 1987, annual quotas were established to determine the number of refugees invited to resettle in the Netherlands. However, the growing numbers of spontaneous asylum seekers, a housing shortage and increased costs that municipalities had to pay for social and other benefits led to 1987's introduction of the Regulation on the Reception of Asylum Seekers (ROA). The first aim of ROA was to curtail giving asylum seekers access to independent housing and social benefits, and instead to offer them central reception and modest sums of pocket money. Muus (1997) observed that ROA, described as 'austere but humane', was not only instated to relieve the growing housing and financial problems of the major cities but also – and above all – to prevent the Netherlands from becoming an attractive destination country. This shift made evident how reception policies were in fact, and in perception, a significant component for managing asylum flows.

Due to the growing number of newly arriving asylum seekers from 1989 onwards, ROA became a policy of providing minimal first accommodation,

yet within a few years it became overburdened. In 1990, for example, the Ministry of Welfare, Health and Culture, which was in charge of the reception of asylum seekers, 'tried to solve the problem by means of buying or renting holiday bungalows and caravans and finding more municipalities that were prepared to accommodate asylum seekers' (Muus 1990: 47). Consequently introduced in 1992 was the New Admission and Reception Model for Asylum Seekers (NTOM). An important difference found in NTOM was that asylum seekers would no longer be accommodated by decentralised ROA housing within municipalities, and municipalities would henceforth only bear responsibility for the reception and integration of those who had passed asylum procedures, namely status-holders and the *gedoogden* (persons with a temporary expulsion waiver).

Moreover, in the early 1990s, the Ministry of Justice introduced several measures to reduce the number of asylum requests. First and foremost, this policy was manifested in measures taken to prevent asylum seekers from even arriving in the Netherlands. For instance, the country's increasing refusal to grant visas – though not exclusive to asylum seekers – limited entrances and hence constrained applications for asylum in the Netherlands. Secondly, introduced in 1994 was a temporary status referred to as a Conditional Residence Permit (VVTV). This new status only carries with it a relatively weak provisional residence title and provides hardly any access to public facilities. Thirdly, measures were introduced to restrict access to asylum proceedings. As other European countries have done so, in 1994, the Netherlands introduced procedures to expedite certain asylum applications, such as 'manifestly unfounded applications', those that were filed by people coming from safe countries of origin or safe transit countries where they could have applied for asylum, multiple applications and other statuses. What's more, people who had applied elsewhere were excluded. In the same vein, the new Aliens Act of 2000 introduced a single temporary status for the first three years of stay in the country, a limit to the right to appeal a negative decision and the duty of the rejected asylum seeker to leave the Netherlands within a fixed period.

Analysing the process of policymaking that began in 1986 and which resulted in ROA's declaration, Puts (1991) observed that government is not a monolithic actor but, rather, a fragmented organisation. The seeming fragmentation of the government may be explained by the fact that its various ministries have different considerations and concerns. Such examples include the Ministry of Welfare, Health and Culture's manageability of reception, the Ministry of Interior's defence of municipal interests and the Ministry of Justice's legal concerns over admission and deportation procedures. But on top of such preoccupations, different dilemmas and ambivalent positions within the ministries have also had to be negotiated. What's more, relations between party politics and ministries have wavered. These differences were finally resolved through compromises, thanks to various

formal and informal decision-making rules and as the consequence of particular triggering events.

Since asylum migration policies have been evidently ad hoc and based on arguments of manageability, rather than on grounds of principles, the general debate around their formulation and implementation has been highly technocratic. In this context, the creation of asylum migration policies has mainly taken place within the government, while there has been relatively little debate in Parliament. Opposition from lawyers and interest groups has hardly been a successful means to prevent the introduction of a series of restrictive measures. Neither cities nor local government have directly participated in asylum migration policymaking, although they have been incorporated into the implementation of reception policies process. As with labour and family migration, a lack of debate and the relatively low impact of different political and social actors in policymaking led to a subsiding politicisation of integration and immigration issues. In particular, two sets of measures aroused concerns and rising responses from external actors.

In the first place, there was progressive exclusion of failed asylum seekers from social benefits and the government's insistence on their return to countries of origin. This kind of measure was directly opposed by local authorities who had to deal with these residents in day-to-day practice. Notably, in February 2004, when the Tweede Kamer, Dutch Parliament's lower house, accepted the Minister for Immigration and Integration's proposal to expel up to 26,000 failed asylum seekers over the following three years, many big cities opposed the policy, arguing for their settlement and integration into Dutch society. Neither did front-line organisations such as the Central Reception of Asylum Seekers (COA) commonly comply with the Minister's rulings on this issue. Finally, church organisations and a strong network of the approximately 10,000 volunteers of the Dutch Refugee Council came to provide support for these failed asylum seekers. This opposition by local authorities and grass-roots organisations illustrates the tension between policy formation at the national level and the often clashing effects that surface once policy is implemented.

The second set of measures was aimed at reducing the number of asylum applications and the duration of asylum procedures. These measures have aroused immediate concerns not only from refugee advocacy groups and academics within the Netherlands, but also from the United Nations High Commissioner for Refugees (UNHCR) and Human Rights Watch (HRW). One basic criticism was that the measures resulted in a 'routine infringement of asylum seekers' most basic rights' (HRW 2003). Other concrete disapproval was voiced over the erosion of the Convention Status, the accelerated procedures and the limit on the right to appeal a negative decision. This last measure is considered incompatible with ECHR case law. According to the ECHR, an alien's claim that his or her deportation

would result in a violation of ECHR Convention's article 3 must be rigorously scrutinised by the domestic courts. The fact that in 2003 the Council of State of the Netherlands replied to these concerns, by arguing that it does apply the rigorous scrutiny required by the ECHR, again illustrates how international and supranational institutions are becoming part of the policymaking process at the national level.

4 Integration policymaking

In comparative perspective, integration policymaking in the Netherlands followed different timing than that of most other European countries, except Sweden. Earlier than elsewhere, the different experiences of immigration from former colonies and labour migration resulted in systematic efforts to better accommodate newcomers whose stay was more permanent than originally expected.

4.1 *Policies of the 1970s and before*

Because the Netherlands did not regard itself an immigration country, those who happened to be there, such as the guest workers, were expected to return to their home countries (Scientific Council 2001). As a result, ad hoc measures for accommodation were the rule, and reception facilities were short-term-oriented and scarce (Penninx 1996). (The only exception to this rule was the assimilation policy for repatriates from the former Dutch East Indies who were seen and treated as compatriots.) Accordingly, the two main policy goals concerned the remigration and accommodation of guest workers to Dutch society for as long as they would stay in the Netherlands. Maintaining migrants' own identity was thus considered important, but in one and the same mind frame that viewed migrants as planning to return to their countries of origin.

In the 1970s, mainly within the Ministry for Culture, Recreation and Social Work, a welfare policy was developed to respond to the needs of some vulnerable groups. They included guest workers, asylum seekers, migrants from Surinam and the Netherlands Antilles, Moluccans and the itinerant Dutch people locally known as *woonwagenbewoners*, literally meaning 'caravan dwellers'. Within this policy, many private institutions were initiated and henceforth subsidised to provide welfare services for each of these groups (Molleman 2004; Blok Commission 2004; Penninx 1979). Nonetheless, many guest workers' facilities, such as housing, were supposed to be offered by the companies employing them. Increasing family reunions, along with the concentration of guest workers and their families in specific urban areas, pushed local authorities to get involved. Often municipalities took their own initiatives in the domains of housing, education,

health care and welfare, thus pressuring the national authorities to recognise – and to finance – these measures. One of the most notable measures of the decade was the Mother Tongue and Culture Programme (1974), which was explicitly aimed at the reintegration of migrant guest workers' children in their societies of origin. But, contrary to all prognoses, many guest workers did not return to their sending countries after the recruitment stopped and the economic crisis that followed in the late 1970s. In fact, migrant communities, particularly those from North Africa and Turkey, grew significantly through family and asylum migration. The rising unemployment rates of migrant workers and the arrival of their families brought demands for specific measures onto the political agenda. For instance, schools with high numbers of immigrant students demanded funds for specific reception courses, creating the Landelijke Commissie Voortgezet Onderwijs aan Anderstaligen, a national federation lobbying for the secondary education of non-native speakers of Dutch.

The administrative layout of the policies described above was problematic. Different ministries were involved for individual target groups and policy domains. For example, the Ministry of Social Affairs and Employment, which was responsible for the labour market and work permits, tended to hold onto the idea of the temporality of migration. The Ministry of Culture, Recreation and Social Work, which oversaw matters of general welfare, was directly confronted with the problems of reception, while becoming more aware of the growing tensions between supposed temporary stay and factual long-term settlement and thus pleaded for change. There were consequent difficulties in coordinating the measures among ministries and, what's more, a certain rivalry existed (Hoppe 1987; Blok Commission 2004; Penninx 1979; Scholten & Timmermans 2004).⁴

It was also during the 1970s that scientists started to get involved. As one of the first to do so, Entzinger (1975) drew attention to the gap between *de facto* permanent settlement of immigrants in the country and the policymaker's view of temporary migration.⁵ Entzinger underscored the risks of ignoring the problem. In 1976, the Ministry of Culture, Recreation and Social Work instated the Advisory Committee on Research on Minorities, which united academics in this domain within a policy frame.

In sum, there had been a mixture of pressures for policy change coming from public opinion, the media, local authorities, academics and civil servants. It was the Scientific Council for Government Policy's report 'Ethnic Minorities' (1979) that acted as a catalyst: it pleaded to fully recognise that a number of immigrant groups had settled permanently in the Netherlands and to start an active policy aimed at the integration of what it called 'ethnic minorities' in society. In a first reaction to the report (Ministerie van Binnenlandse Zaken 1980), the government accepted the advice, decided to develop an EM Policy and to install a strong coordinating structure for such policy within the Ministry of Home Affairs. The new direction of

policies gained full parliamentary support, which was symbolised in a government coalition whereby the Christian Democrats and the Liberals nominated oppositional Labour Party politician Henk Molleman as director of the coordination department within the Ministry of Home Affairs.

4.2 *Ethnic Minorities Policy in the 1980s*

The basic rationale of EM Policy was that specific groups in Dutch society that had low socio-economic status and were additionally perceived as ethnically and/or culturally different would run the risk of becoming permanently marginal groups in society. Low-status immigrant groups thus became target groups of this policy, as did some natives such as the *woonwagengebwoners* and the long-established gypsies. The main principles of the new EM Policy can be summarised in three points:

- 1) The policy aimed to achieve equality of ethnic minorities in the socio-economic domain; inclusion and participation in the political domain; and equity in the domain of culture and religion within constitutional conditions.
- 2) The policy was targeted at specific groups regarded as being at risk of becoming distinct minorities: guest workers, Moluccans, Surinamese and Dutch Antilleans, refugees, gypsies and *woonwagengebwoners*.
- 3) The policy was to cover all relevant domains and ministries, while being strongly anchored in the governmental organisation.

As a result, the Directie Coördinatie Integratiebeleid Minderheden, a department for the coordination of minorities policy, was created within the general directorate of Home Policies, as opposed to within that of Security and Order (Molleman 2004). The motivation for placing the coordinating unit in the Ministry of Home Affairs was that it was a policy for new citizens, and therefore the ministry responsible for cities and provinces should be in charge.

Emancipation through socio-economic equality and cultural and religious equity was seen as an important means to prevent ethnic minority formation among these groups. Thus, their participation in all spheres of society, including the political, was to be encouraged. An important assumption was that development of identity – both at the individual and group level – would promote the minority's emancipation within the community and would also have a positive influence on its integration in broader society (Blok Commission 2004). The 1980s have come to be seen as the heyday of EM Policy. Irrespective of how the outcomes are evaluated, the range of policy initiatives is impressive, especially when compared to other European countries during the same period.

In the legal-political domain, for example, the Netherlands' full legislation was scrutinised for discriminatory elements on the basis of nationality,

race and religion (Beune & Hessels 1983), and many changes were made. Anti-discrimination legislation was reinforced, and a structure for discrimination-related reporting and consultation was established. What's more, in 1985, active and passive voting rights for alien residents were introduced. In 1986, Dutch nationality law was modified to include more elements of *jus soli*, thus making it much easier for alien immigrants and their children to become Dutch citizens. Over the course of time, a consultation structure for all target groups of EM Policy was established to give people a voice in matters regarding their position in society.⁶ Subsidising EM organisations, both at national and local levels, and trying to engage them in integration efforts became an important strategic aspect of policy implementation.

In the socio-economic domain, three themes were key: the labour market/unemployment, education and housing. In EM Policy, several initiatives were taken to combat high unemployment rates, including a law inspired by the Canadian Employment Equity Act and even affirmative action by national and local governmental employers during the period 1986 through 1993. The effects of these measures, however, have proven weak.

Measures in the domain of education were an important part of EM Policy from the beginning. By far, most of the policy's financial resources were spent in this domain, predominantly on measures to compensate arrears of immigrant children in the regular educational system. That was implemented by a point system in which schools received significantly more money for children of immigrant background than for standard middle-class, native pupils. Immigrant and minority children were counted at a rate of 1.9, while native children of low socio-economic background, at a rate of 1.25 (the standard was 1). Apart from this general financial assistance to schools, a relatively small part was also dedicated to specific measures, including education in the native language and culture of immigrants.

As for housing, a fundamental change was introduced in 1981 that allowed legally residing aliens full access to social housing, something that had been previously denied. Given the fact that social housing comprises the majority of all lodging in big cities in the Netherlands, this measure had very positive consequences for the position of alien immigrants.

In the domain of culture, language and religion, EM Policy may be called 'multiculturally' *avant la lettre*.⁷ The aim to develop migrants' culture, in keeping with EM Policy philosophy, was left to the groups and their organisations, and delimited by laws for general adherence in the Netherlands. The role of the government was defined as that of facilitating, i.e. creating opportunities for minorities, such as special media programmes in immigrant languages.

When it came to faith, 'new religions' could legally claim facilities, such as denominational schools and broadcasting resources, on the same

conditions as established religions. The outcome was the relatively quick institutionalisation of Islam (Rath, Penninx, Groenendijk & Meijer 2001).

Throughout the late 1980s, disappointment in EM Policy was growing, but it was only by the early 1990s that it became the topic of intense public debate and surrounding criticisms. The first harsh critique of EM Policy was formulated in a report by the Scientific Council for Government Policy (1989). Briefly stated, its message was that too little progress was being made in two crucial domains: labour market and education. This evaluation intimated another criticism: too much attention was being given to issues of multiculturalism and the subsidisation of organisations. It was feared that this imbalance of attention could result in hindering – rather than enhancing – individual participation to better labour market and educational opportunities. The subsequent advice of the Scientific Council (1989) was to make more effort in the key areas of labour and education, and to do so with more compulsory measures. ‘Obligations of migrants should be more balanced with the extended rights’ was the message; policies should focus less on cultural rights and facilities.

Other elements of criticism were later added. For one, Frits Bolkestein, then Liberal Party leader and head of the political opposition in Dutch Parliament, suggested in a public speech in 1991 that Islam formed a threat to liberal democracy. He also intimated that it was a hindrance to the integration of immigrants, and that immigrant integration should be handled, in Bolkestein’s words, ‘with more courage’.

4.3 *Integration policy in the 1990s*

Policy did not change immediately in response to the criticisms, but sown were the seeds for a different conception to grow later. A first distinct change in policy focus was found in the ‘Contourennota’ (Ministerie van Binnenlandse Zaken 1994). In this new document, a renewed integration policy with a more ‘republican’ character was adopted, focusing on ‘good citizenship’ and responsibility for their own situation as guiding principles. The argument was that citizenship entails not only rights but also duties, and that each citizen must be active and responsible for himself or herself. In accordance with advice from the 1989 report of the Scientific Council for Government Policy, this new ‘integration policy’ reflected three main deviations from EM Policy: 1) a shift away from target groups to individuals who are in a disadvantaged position; 2) a strong focus on the socio-economic incorporation through labour market and education measures; 3) a shift away from cultural and multicultural policies as well as from the strong reliance on immigrant organisations.

The social-democrat victory in the national elections of 1994 led to the so-called Purple Coalition: the Labour Party (PvdA) together with the conservative liberals (VVD) and left-wing liberals (D66). This meant that the

cabinet chose to put 'the delicate cultural dimension outside of the field and to focus on the economic activation of individual migrants' (Scholten & Timmermans 2004). The focus on economic integration of individual immigrants recommended by the 1989 Scientific Council report fit very well with the general policy line of the government, whose motto was 'work, work, and once again work'.⁸ Thus, measures specifically targeted at ethnic minorities were abandoned. From 1997 until 2001, considerable sums were invested in general schemes to fight unemployment. And although these schemes were not specifically earmarked for ethnic minorities (Blok Commission 2004), one hope was that they would promote their participation nevertheless.

A new policy instrument apropos of the new philosophy was that of civic integration courses⁹ that aimed to facilitate the initial integration of newcomers to the Netherlands. This instrument for integration was developed at the local level among a number of Dutch cities beginning in the early 1990s. In these reception courses, newcomers were given a toolkit consisting of Dutch-language training material and information about the functioning of important institutions in Dutch society. Local policymakers felt the urge to provide these toolkits to all newcomers, whom they believed needed them, and so the policy was systematically developed in their respective cities. However, this instrument for integration was later consumed by national politics, and through 1998's *Wet Inburgering Nederland* (WIN), the law became national reception policy.

Another way of transforming policies to keep consistent with the new philosophy was by framing much of integration facilities in area-based policies (rather than group-based ones). In 1994, the Ministry of Home Affairs began to undertake a policy for deprived areas in major Dutch cities. This practice could be understood as a replacement of integration policies, for these targeted areas were largely comprised of ethnic minority populations. Area was selected as a primary policy category instead of a group singled out in society. In the mid-1990s emphasis thus shifted from housing and urban renewal (known in Dutch as *sociale vernieuwing*) to more holistic programmes that integrated measures on housing, economic issues and socio-cultural dimensions (referred to as the *grote stedenbeleid*). Reflecting the above-mentioned preoccupations of the Purple Coalition, this multi-dimensional approach came to focus on socio-economic development.

The change from group-based towards area-based policies was also institutionally reflected. In 1998, a new so-called Minister for Urban Policies and Integration was nominated within the Ministry of Home Affairs. Although such area-based policies had served as a way of quitting group-oriented policies, group-specific policies still survived at the local level of policy.

A series of events around the turn of the millennium triggered a new shift in the public and political discourses on immigration and integration issues, which would prove to later cause a revision of policy towards assimilationism. This swing brought the social and the cultural dimensions of integration back onto the agenda, though in a different light than was ever before shed on the matter. The search was no longer for 'compatibilities', but more for 'commonalities' that would help preserve national norms and values, thereby restoring and enhancing the social cohesion of society. More and more, the integration issue came to be portrayed in what was perceived to be a 'clash of civilizations'.

One of the initial catalysts in this development was the new national debate that was spurred on by the publication of a newspaper article by Scheffer (2000). The article stated that multicultural society in the Netherlands could be dismissed as a 'tragedy' or a 'disaster'.¹⁰ Integration policy was declared a failure and, moreover, a call was made for a more assimilationist policy that would revive Dutch history, norms and values. As in the first debate over national minorities that took place in 1992, Islam and the integration of Muslim immigrants were identified as being especially problematic. International developments such as 9/11 reinvigorated such beliefs. Fennema (2002) has shown how the terrorist attacks triggered particularly fierce responses in the Dutch media, and led to several local incidents of ethnic and religious violence.

In the meantime, the Dutch political arena witnessed the rise of the politician Pim Fortuyn. A true populist, Fortuyn built up his profile with harsh statements on criminality, direct democracy, immigration and integration. He pleaded for 'zero migration', argued that 'the Netherlands was full' and called for 'a cold war against Islam'.¹¹ To these arguments – which were not completely new – he added two elements: the accusation that the political elite had enabled the failure of integration in the past; and the contention that the victim of all this was the common – and, at that, native – Dutch voter.

Fortuyn's populist campaign exploited his discourse very successfully. Above all, his party won a great victory in March 2002's local elections in Rotterdam, the Netherlands' second largest city. And although only a few weeks later, Fortuyn was murdered – just before the national elections of May 2002 – the newly established Lijst Pim Fortuyn (LPF) won a landslide victory. In spite of (or perhaps thanks to) his death, the LPF party gained 26 of the 150 parliamentary seats and thus entered Parliament as its second-largest party. This success changed the political discourse on immigration and integration radically. In fact, the aftermath of the Fortuyn victory compelled most other parties to adapt their own ways of speaking about the issues (Penninx 2006).

Another sequence of notable events followed. It is uncertain as to whether the events themselves had truly triggered attention to the issues of

migration and integration, or the already high-alert status of these issues on the political agenda gave these events the appearance of being trigger events. First of all, a series of violent acts committed by immigrants drew broad media attention. Secondly, several events emerged around the issues of so-called fundamentalist mosques and radical imams. Finally, in 2004, a major climax came when the Dutch film-maker Theo van Gogh was murdered by a Dutch-Moroccan youngster who was affiliated to a radical Islamist network in the Netherlands.

These events had two significant effects. First of all, they contributed to a sense of policy failure. Parliament thus established a Parliamentary Research Committee on the Integration Policy, comprising MPs of all parties in Parliament, in order to examine 'why policy had thus far resulted in such limited successes.' However, when the Committee concluded that integration had actually been relatively successful (Blok Commission 2004), the statement was widely dismissed as being naive. This rejection made some observers complain that a new 'political correctness' had emerged, thus putting taboos on positive statements on the integration policy and multiculturalism.¹² Secondly, these events reinforced a new mode of policy discourse, described by Prins (2002) as 'hyperrealism'. This entailed a shift from the 1990s 'realist' style of discourse – demanding a 'tough' approach to integration so as to turn immigrants into full citizens – to a type of discourse in which 'being tough' became a goal in itself, regardless of its potentially problematic amplifying effects. As such, it could be argued that Fortuyn, and later, erstwhile Minister for Aliens Affairs and Integration Rita Verdonk, used the immigration and integration issue to flaunt their 'tough' approaches to the political establishment and, in so doing, to promote their own places in Dutch politics.

4.4 *Integration Policy New Style since 2002*

Thus, from 2002 onwards, the policy took another turn, as a new political majority was in power.¹³ The renewed institutional setting foreshadowed changes: the coordination of integration policies was moved from the Ministry of Home Affairs (in which it had been located for 22 years) to the Ministry of Justice under a new Minister for Aliens Affairs and Integration. Integration Policy New Style, formulated in a letter by the Minister for Aliens Affairs and Integration (Ministerie van Justitie 2003), closely follows the paradigm of the 1990s, as based on the leading concepts of 'citizenship' and 'self-responsibility', though its emphasis was much more on the cultural adaptation of immigrants to Dutch society. The concept of integration policy was thus narrowed considerably. In addition, integration policy had become clearly linked – instrumental even – to immigration policy as it facilitated the selection of migrants and restricted

new flows, particularly those of asylum seekers, family reunion and marriage migration.

The star measure in this new policy was the civic integration of new migrants to the Netherlands, something which was reformulated to serve purposes of both integration and migration control. Since 2006, newcomers have been obliged to pass an exam that proves their Dutch language skills and basic knowledge of Dutch culture and society before even entering the country. Once admitted to the Netherlands, migrants must attend – and successfully complete – civic integration courses in order to be granted both temporary and permanent permit renewals.

The reception policy New Style thus has significant modifications when held up to the former decade. To begin with, it newly distributes responsibilities among the various partners involved, with the migrants' own responsibility being the starting point. As of 2007, newcomers to the Netherlands have been expected to find and fund the civic integration courses themselves.¹⁴ Only if they pass the exam are they entitled to a refund of up to 70 per cent of their training expenses. In this programme, the responsibilities of local authorities have changed: although they still have to monitor newcomers and their efforts to follow courses, their organisational and financial resources to promote such a process have been minimised.

As Minister for Aliens Affairs and Integration, Verdonk had aimed to expand the target population of the new reception policy. In her first proposal, the target group for mandatory civic integration courses included all migrants between ages sixteen and 65, regardless of the amount of time they had spent in the Netherlands and even if they had been naturalised as Dutch. Deemed unacceptable by legal authorities and politicians, this proposal was revised with a vision to extend the requirements to everyone who had completed fewer than eight years of obligatory schooling in the country. This target would include the so-called oldcomers – people of migrant origin already living in the country – as well as naturalised immigrants and native Dutch who had been living abroad. Verdonk also specifically attempted to extend the requirement to immigrants from the Netherlands Antilles, justified by the supposedly 'problematic character' of this minority group. The particular proposal, however, was rejected by Parliament who found it unconstitutional and discriminatory, since Dutch Antilleans hold Dutch nationality to begin with. A final proposal was ultimately passed at the very end of the cabinet's legislative term, in July 2006, removing the new reception policy requirements for Dutch citizens – native or naturalised – and postponed its actual implementation to the next legislature.

A number of observations can be made regarding content, the policy-making process and the governance of policy. The first observation is that immigration and integration policies have been brought together on two

levels: in terms of content across a number of policy measures; and in their institutional arrangement within the Ministry of Justice, under the special Minister for Aliens Affairs and Integration.

The second observation is that the process of policymaking – in the context of strong politicisation – is predominantly led, as well as set forth, by the Minister and the political parties in Parliament. At the same time, this policymaking process is rather selective in the topics it chooses: restrictive admission of new immigrants, forced return of failed asylum seekers and illegal immigrants, and mandatory civic integration courses. Undergoing a major recentralisation, these new policies were spearheaded from a top-down approach that was dominated by the Ministry and Parliament.

At the same time, as an observation among people interviewed at the local level demonstrates, the majority of existing policies were left untouched or changed only marginally. Ministries at the national level (such as those for education, housing and labour market) and local authorities have both carried on with most of their existing policies. This means that – contrary to the widespread image – many of the earlier instruments that were developed through more than 25 years of integration policies are still in place. Despite the predominant concordance that these policies have failed, they have had – and still have – their effects (Poppelaars & Scholten 2008).

A fourth observation is that there is growing resistance to the new national policies, particularly at that local level, coming from both the local government and civil society at large. Actors that were marginalised by earlier welfare policies, such as churches and action groups, have become actively in favour of immigrants, trying to protect them against governmental action deemed unjust. Immigrants themselves – as citizens – are also becoming important actors, although in a way different from ever before. The local elections of March 2006 showed that the migrant vote has become an important instrument for redress, particularly in large Dutch cities (Van Heelsum & Tillie 2006). In Rotterdam, for example, migrants have contributed significantly to the exit of the local LPF's power by voting systematically for leftist parties and thus bringing the Labour Party back in. And this has not gone unnoticed by political parties. What's more, on the national level, there are growing indications of resistance against the tone and the content of migration and integration policies. One example is April 2006's manifesto of *Één land, één samenleving* ('One country, one society'), which was signed by former politicians from political parties across the board; another illustration comes from October 2006 when sixteen university chair-holders in migration and integration studies sent an open letter to the Eerste Kamer, Dutch Parliament's upper house, in protest of the proposed revision of the WIN.

5 The interaction between immigration and integration policies

Thus far described have been the dynamics of policymaking in the domains of Dutch immigration and integration policies. It was observed how, although only gradually, the Netherlands' identification as a country of de facto immigration – and possibly even an immigration and/or multicultural society – triggered responses in both policy fields. This section will look at the dynamics of the interaction between these two fields. How do patterns of internal dynamics of immigration and integration policy compare? And to what extent has there been interaction between developments in these two policy fields? Before turning to this analysis, some observations on their differences and similarities will be drawn.

5.1 *Patterns of convergence and divergence*

Differences between immigration and integration policy fields are first and foremost demonstrated by the way the subsystems are institutionalised within the central government. Whereas integration policy has been characterised by a comprehensive or strongly unitary and centralised policy coordination structure, the institutional structure for the coordination of immigration policies appears to have been less comprehensive. Since the early 1980s, integration policies had been assigned within the Ministry of Home Affairs (until their reassignment to the Ministry of Justice in 2002). Within this department, a strong – albeit fluctuating – structure was constructed and maintained to coordinate policies horizontally, between ministries, and vertically vis-à-vis local authorities, subsidised organisations, co-opted experts, ethnic elites and civil society actors. This system produced policy documents, monitored implementation and had an explicit budget (separate from funds supposed to come from the regular budgets of ministries, municipalities and other policy actors). In contrast, the institutional location of immigration policies was (only until recently) far less clear. The Ministry of Justice had always held formal responsibility over admission of aliens, residence permits and possible expulsions, but the Ministry was not always the body to decide on policies regarding admission. This was the case, for example, with economic and asylum migrants, over whom other departments shared responsibility. As such, immigration policies were notably less comprehensive and less unitarily coordinated than integration policies. Immigration policies were, for a long time, subject to little debate, and ad hoc policies were usually formulated in response to actual influxes of immigrants. Immigration policies thus have long been considered 'quasi non-policies'.

Another difference between the two policy fields has, since the 1990s, become more manifest. While both policies had originated largely on the

national level, as would be expected in view of the Dutch tradition of a centralised consensus democracy, they came to develop in different directions of multilevel governance. Immigration policy has been shifting upwards (to the EU level), outwards (among private agencies) and downwards (in implementing the Linkage Act, for example). The shift upwards to the European level has also served to provide new intergovernmental venues for strengthening national control, as opposed to handing over policy-making competencies to the supranational level; within the European 'intergovernmental' arena there would be less resistance to tightening migration control than within many national political arenas.

By contrast, a more pronounced trend of recentralisation can be observed in the integration policy. This is especially apparent in terms of policy formulation and how issues are framed, as well as in the specific topics that have spearheaded national policies and have been linked to other issues on the national agenda. The 1990s' trend towards decentralisation had thus been halted and, to some extent, reversed after the turn of the millennium. In the instance of civic integration courses, the shift outwards to private agencies has coincided with the recentralisation of state control over the courses, as in the case of the national integration exam. At the same time, however, this top-down dynamics of recentralisation appears to be limited: the institutional locus of many policy measures, such as in the domains of labour and education, has remained with specific ministries and local governments, all carrying out their own measures over these files. This has led to the growing gap between national and local integration policies, similar to the decoupling or '*décalage*' that Schain (1995) observed in France. There seems to be an increasing divergence between symbolic politics at the national level and more pragmatic problem-coping at the local level. Only in domains like anti-discrimination is a more significant trend of Europeanisation apparent.

Similarities in internal policy dynamics between the two policy fields have been evident as well. Perhaps the most significant convergence is the politicisation of immigration and integration policymaking over the last decade. Both have become the subject of intense political debate, often framed in rather rhetorical and symbolical terms, and dominated by a negative tone. The attention implies that both policy subsystems have become less isolated from macro-politics and, what's more, that they are increasingly vulnerable to external perturbations. Both have become top political priorities, also in electoral politics, leading to a different logic of policy-making processes. This has also led to similar patterns of resistance in both subsystems. Local governments especially have attempted to countervail the politicising tendencies in immigration and integration policies, calling for a more positive and pragmatic approach.

Another similarity, related to this politicisation, concerns the growing gap between policy discourse and policy practice. On the one hand, a

strong variability in policymaking can be observed over the past decades, with both domains characterised by episodes of relative stability and then punctuated by strong changes in the framing of policy. Such fluctuations make it difficult to evaluate policies, as the rules for measuring success or failure have also been in constant flux. On the other hand, policy practice has shown what appears to be a strong tendency towards path dependency. Policy practices that were established in one policy episode have often proven very resilient in periods that follow. For instance, the Mother Tongue and Culture Programme had a chameleon-like existence – with its multivalent contributions to return migration in the 1970s, to multicultural society in the 1980s and to acquisition of Dutch-as-second-language in the 1990s – before being finally abandoned in 2001. Another example of policy resilience is shown by the persistence of labour migration long after its official termination in 1973 into the present day – despite all the discourse on bringing it to an end. National politics' tough rhetoric on illegal migration notwithstanding, actual policy practices vis-à-vis illegal migrants seem much more subtle. The growing gap between policy rhetoric and policy practice emerges as the result of a general institutional path dependency, as well as the diverging patterns of multi-level governance (albeit manifested in distinctly unique ways in the immigration and integration policy domains).

5.2 *Interaction between immigration and integration policy fields*

The early 1980s interpreted the arrivals of newcomers as historically unique events. As such, there was demand for a minorities' policy for these groups as well as a restrictive immigration policy in order to prevent further immigration. A restrictive immigration policy was then justified as a necessary condition for a successful EM Policy: a constant influx of new immigrants would create a constant demand for new policy efforts.

Such an understanding of the relation between immigration and integration policies changed in the 1990s. The 1989 report of the Scientific Council for Government Policy called for more realistic recognition of the permanent character of immigration. Not only would the presence of minorities, but also of immigration itself, be responsible for creating a permanent phenomenon in Dutch society. While the report supported a restrictive immigration policy, it also suggested adaptations in the integration policy so as to cope with the constant influx of newcomers. In this vein, it recommended the development of civic integration programmes that would provide the link between the continuously arriving newcomers and their subsequent integration in Dutch society.

This definition of the correlation between immigration and integration was largely adopted by government of the early 1990s. It soon led the government to abandon the preceding decade's relatively lenient policies on

family migration, which came to be viewed as a growing problem for integration. But there were also ideas within governmental circles that took some steps further. By the end of the 1980s, the Interdepartmental Working Group on Immigration (IWI), which was chaired by the Justice Department, argued that a realistic recognition of the nature of immigration should generate more than mere efforts to optimally restrict immigration. What needed to be accounted for was the ‘immigration effect’ that was enabled by the very facilities to which minorities had access under the integration policy. In short, immigration was not only to be restricted so as to promote integration, but integration policy should also be less generous so as not to encourage further immigration.

Since 2000, Dutch society has witnessed the development of a more systemic connection between immigration and integration. Not only do policy memoranda explicitly address the need to restrict immigration so as to not endanger the ‘absorption capacity’ of Dutch society, but more stringent integration policies have increasingly become a tool for restricting immigration. The new reception programmes described above have become a way for the Dutch government to promote the integration of newcomers, as well as to discourage further immigration. In doing so, the programmes simultaneously function as a mechanism through which to select those migrants who could prove beneficial for the Dutch economy.

6 External factors

Although it is useful to focus on internal mechanisms in the immigration and integration policy fields, these observations are not unrelated to more general characteristics of Dutch society and its development. Three major developments, it seems, have had a particular influence on the process of policymaking on migration and immigrant integration in the Netherlands. They are the legacy of pillarisation, the Dutch welfare state and the political culture of the Netherlands during the past decades.

6.1 *The legacy of pillarisation*

The legacy of pillarisation is an oft-raised explanation for Dutch exceptionalism in many domains (Hoppe 1987). Beginning in the mid-19th century, the Netherlands had grown into a segmented society that was structured around four ‘pillars’. The pillars comprised specific social, political or religious groups – Protestants, Catholics, Socialists, Liberals – and were brought together only at the top where any inter-pillar conflict would be ‘pacified’ by elites of the pillars. This particular facet of Dutch history has had pervasive effects on the country’s culture and the structure of its political system as a ‘centralized consensus democracy’ (Lijphart 1968). Since

the 1960s, secularisation and individualisation came to erode the social basis of Dutch society's once pillarised structure. The role of religious institutions in society gradually decreased, their relation to the nation-state was loosened and a new notion of citizenship emerged to create a direct connection between individuals and the nation-state.

These changes notwithstanding, pillarisation has had an important influence on immigrant integration policies in two basic ways. The first way relates to how migrants themselves were 'framed'. Whereas in other European countries immigrants were defined on the basis of class, race or colour, in the Netherlands, they were defined as ethno-cultural groups and 'minorities'. Framing immigrants as minorities reflected the Dutch style of an accommodating pluralism: defining immigrants as another minority added to all those already existing. In addition, the pillarist tradition was reflected in how immigration and integration issues were coped with. The fragile coalition system of Dutch politics, a legacy in the history of pillarism, demanded that politically sensitive issues, such as immigration and integration, be depoliticised so as to avoid centripetal forces. For example, 'playing the race card' for electoral gain could drive the political system apart. Especially in the 1970s and 1980s, these issues were systematically depoliticised, accommodating conflict within relatively closed networks of policymakers, experts and ethnic elites. Issues 'too hot to handle' for politics were resolved through technocratic compromise, creating a so-called 'consensual style' of applying expertise as an authoritative source to create political consensus, rather than imposing such a consensus through open political confrontation. But this style of policymaking started to break down in the 1990s, giving way to a much more conflictive style after the turn of the century.

The second way pillarisation has proven influential is in the institutionalisation of laws and regulations. Steady secularisation of the Dutch population and decreasing significance of pillar institutions and organisations notwithstanding, laws and regulations have not changed that much. Although ethnic minorities themselves never were as cohesive, sizeable and strong as the traditional pillars of the Netherlands used to be, the institutional legacy provided minorities with opportunities for the development of some of their own institutions. Legal provisions of all kinds disseminated on an equal basis, led, for instance, to the recognition and establishment of Islamic institutions in the Netherlands. State-subsidised Islamic schools and an Islamic broadcasting organisation are remarkable examples. It was only from the 1990s onwards that such developments became politically contested.

6.2 *Welfare state regime*

Another factor that has had a significant impact on immigration and integration policymaking is the development of the Dutch welfare state over the past decades. The Dutch welfare state regime has traditionally been classified as conservative-corporatist. This type of state involves a relatively high level of decommodification of citizens from market forces and the strong involvement of state and civil society actors, such as churches, labour unions and employers' unions, in welfare state provisions. This model does not encourage universal labour participation among individuals, but tends to preserve the prevailing socio-cultural structure of society as expressed in family, class, status and, to some extent, also gender. It was in the context of this welfare state regime that Dutch integration policies began developing in the 1980s. This was reflected in a policy that did not see immigrants exclusively as part of market forces, but also encouraged them to become emancipated and recognised cultural groups in Dutch society.

The end of the 1980s reveals poor results vis-à-vis the socio-economic aspect of EM Policy. There was a general, fact-supported consensus that EM policies in the field of labour were ineffective throughout the 1980s, as manifested in continued high unemployment and the low labour market participation among immigrants. The position of constant weakness experienced by minorities was due to the general restructuring of Dutch economy, with its particular consequences on immigrants, as well as the result of deficiencies in the Dutch welfare state. It was argued that the lenient regime of access to benefits had turned minorities too much into 'welfare categories' trapped in, and overly dependent on, state provisions. By then, the welfare state's viability had also become questionable for a number of reasons. Thus, the issues of immigration and integration and the need for welfare state retrenchment were brought together, producing a new perspective. The same Scientific Council pleaded in several reports for a more proactive type of welfare state by a more liberal regime. For immigrants, this meant encouraging them to 'stand on their own feet', as well as discussing their civic rights and duties as new citizens.

The rise of the 1990s Integration Policy was thus closely related to the general reform of the welfare state at the time, particularly involving a recalibration of the responsibilities of citizen, state and market. State interference vis-à-vis the socio-cultural position of immigrants gradually lost importance. Immigrants came to be treated more as 'citizens' endowed with specific civic responsibilities. Civic integration became a specific new instrument to 'equip' immigrants so they might live up to their civic responsibilities for integrating into Dutch society. The relation between welfare state reform and restrictive immigration policy was embodied in the

Linkage Act, which excluded all illegal residents from facilities of the welfare state.

Recent policy has witnessed the addition of a new element to the logic of political discourse. Whereas the articulation of socio-cultural differences has traditionally been perceived as a 'corroding effect' on social cohesion, it may, in the same vein, be seen as undermining the type of social solidarity necessary to maintain a viable welfare state (Entzinger 2006). As such, the basic issue is no longer how to promote socio-economic participation in order to keep the welfare state affordable, but rather, how to maintain social cohesion and solidarity in order to generate sufficient support for the welfare state.

6.3 *The macro-political context*

Finally, in the early 2000s, the style of politics shifted from conflict accommodation and de-politicisation towards primacy of politics and a more confrontational political culture. In this context, immigration and integration policy have become the playing fields for this new political style. This new style has had serious consequences for actors such as experts and ethnic elites. For example, 2004 witnessed the fierce contestation of the role of experts in this policy domain. Politics and media criticism emerged concerning how the development of policy ideas might in fact be in the hands of 'scientists who have multiculturalist biases' (see Scholten 2011). The technocratic relationship between science and politics characterising this domain in earlier periods was now dismissed as undemocratic. As a consequence, the consensual style of using expertise in policymaking and implementation was now replaced by a more selective 'pick-and-choose' strategy aimed at scientific expertise.

Immigration and integration policies appear to have been as much a cause – as an effect – of macro-political developments. Immigration and integration were at the centre of the Fortuyn Revolt, whose leader exploited such issues as a vehicle for political designs. As Dutch government and democracy malfunctioned, the issues were subsequently turned into scapegoats for broader popular dissent. For the 2002 and 2003 parliamentary elections, immigration and integration became central electoral issues unlike ever before. The failing integration policies and an alleged ignorance towards public concerns about immigration and integration became the greater symbols of a failing political system. In response, government and politicians politicised the issues more than ever before, a phenomenon that has recently been described as the 'articulation function'. In this light, politics is seen as naming and articulating the public's sentiments and problems. Integration is here interpreted as encompassing something broader than mere immigrant integration: namely, the integration of immigrants and natives within a multicultural society.

7 Conclusions

The Dutch case reveals a sequence in policymaking: from the 1970s' ad hoc policy responses to a technocratic type of policymaking throughout the 1980s and 1990s, and finally, to the more symbolic politics that began in 2002. In a certain respect, the Netherlands' development differs from other European countries. For instance, in the United Kingdom, immigration and integration were politicised at a much earlier point in history and the model of policymaking was bottom-up rather than top-down. The Netherlands also proves different from Germany where, although politicisation was also held off for considerable time, recently a pragmatic approach of coping with integration problems has come to persist. Similarities, however, are found in the way French policymaking has developed. As in the Netherlands, a pragmatic approach to coping with problems was initially exchanged for a form of technocratic governance, eventually to be replaced by symbolic politics. Still, this development occurred at a much quicker pace: the subsystem of technocratic governance was already emerging in the 1970s with the politics of insertion, and a politicised form of symbolic politics showed up by the early 1980s following the rise of the Le Pen Movement.

The perceived Dutch exceptionalism in immigration and integration policymaking stems, in particular, from the combination of a persistent top-down policy formulation and what was a relatively late politicisation of the topics. More than elsewhere, immigration and integration policies have been formulated mainly at the national level, within centralised and strongly institutionalised structures involving the participation of a limited number of actors. The scale of public debate was actively limited for a considerable time, thus evading the politicisation of these sensitive issues.

This chapter has thereby put forward some explanations for the apparent Dutch exceptionalism. First analysed, in terms of an internal dynamics, was how specific patterns of governance could persist in the Netherlands for such an extended period. Given the societal definitions that separated immigration from integration – and thanks to the subsequent de-politicisation of the topics – specific policy coalitions could develop. When it came to integration, iron triangles supported group-specific policies in the 1970s, to be succeeded in the next decade by the strongly centralised technocratic structure. As for immigration, the topic has long been implicitly defined as a 'non-issue', thus resulting in ad hoc, reactionary policies. This was criticised during the 1990s, though the system simultaneously showed a great resistance to change. It was after the turn of the millennium, when this pattern of governance disappeared, that the two policy topics became tied up together as issues of high politics.

On an altogether different level, this chapter also explored external factors that could account for exceptionalism. First of all, the Dutch legacy of

pillarisation, in the form of a political culture of conflict accommodation and consensus-seeking, may explain why policymaking has for so long remained behind closed doors in the Netherlands. This history of pillarisation contributed to framing immigrants as 'minorities', as well as to the initial development of a multicultural policy approach. It may also have contributed to a tendency to depoliticise issues, such as immigration and integration, that were 'too hot to handle' for politics. The Fortuyn Revolt led to the emergence of a more confrontational political style, which may be interpreted as much as a revolt against the legacy of pillarisation as against specific immigration and integration policies.

Furthermore, changes in the Dutch welfare state – from a corporatist model to a neo-liberal one – have been cited as catalysts for modifying policy objectives and their target populations. As immigration and integration became issues of electoral politics, they came to merge with macro-political issues such as a collective unease with the Dutch political establishment and concerns about national identity and social cohesion. As such, the issues have become symbols for a 'New Politics' that tries to regain popular legitimacy by articulating the voice of 'the ordinary citizen' and adopting a neo-conservative line of tough policies.

Notes

- 1 In recent times, *allochtoon* – which refers to the Netherlands' allochthonous population, literally meaning 'from foreign soil' – has become the standard Dutch term used in statistics and policy. Technically, an *allochtoon* is defined as a person born outside the Netherlands (i.e. a 'real' immigrant) or a person with at least one parent who was born outside the continental Dutch territory. Within the allochthonous population, a further distinction is made between 'Western *allochthones*' (roughly referring to those coming from Europe and industrialised countries) and 'non-Western *allochthones*'.
- 2 Arrival of inhabitants from former and present Dutch colonies or parts of the Netherlands Kingdom was not, by definition, seen as immigration. Its regulation was based on recognition of an individual's Dutch citizenship. In the case of repatriates from Indonesia, this meant that only those who had natural or acquired Dutch citizenship could 'repatriate'. Repatriates as such included Dutch citizens who had settled in the Dutch East Indies and those born of mixed relations who were 'recognised' by the Dutch partner involved. Inhabitants of Surinam and the Netherlands Antilles were citizens of the Netherlands Kingdom, according to the Treaty of 1954, and were thus free to move. This changed for Surinam in November 1975, when the country gained independence and thus created Surinamese citizenship. During the transition period from 1975 to 1980, however, many Surinamese individuals successfully claimed their Dutch citizenship.
- 3 The Scientific Council for Government Policy (WRR) is an advisory body that gives solicited and unsolicited advice to the national government on all kinds of policy issues.
- 4 Such challenges among coordination efforts were brought to the political fore in a 1978 parliamentary motion (motion Molleman, PvdA) in which the Minister of

- Home Affairs was asked to take responsibility for coordinating policy pertaining to all minorities. This idea was later realised in 1980 when the government decided to work towards the general EM Policy.
- 5 Notably, Han Entzinger was working at the staff department of the Ministry of Culture, Recreation and Social Work when he wrote the 1975 article referenced here.
 - 6 In 1985, the National Advisory and Consultation Body (LAO) was established so as to represent ethnic minorities through their own organisations. The LAO was to advise the government on issues of immigrant integration and to be consulted on administrative issues vis-à-vis integration policy. In 1997, the LAO was replaced by the National Consultation Body for Minorities (LOM), an institution with a weaker mandate.
 - 7 The policy documents of 1981 and 1983 do not employ the term 'multiculturalism'. Particularly by adversaries, referring to EM Policy as consisting of 'multiculturalist' policies is something that was only later introduced.
 - 8 Top measures included those such as the subsidised Melkert jobs for the long-term unemployed.
 - 9 These courses are known in Dutch as *inburgeringscursussen*. The word '*inburgering*' contains the word '*burger*' (meaning 'citizen'), but its denotation is not that of naturalisation (i.e. becoming a national citizen) as much as that of becoming a well-informed, active participant in society. For the sake of clarity, the authors of this chapter prefer the term 'civic integration courses' rather than 'citizenship programmes', for the courses do not necessarily prepare people for national citizenship.
 - 10 The meaning depends on one's translation of the Dutch word '*drama*' in the title of the article 'Het multiculturele drama'.
 - 11 Interview published in the newspaper *De Volkskrant* 2 November 2001.
 - 12 TK (Tweede Kamer), 6 April 2004, 63-4112.
 - 13 Cabinet Balkenende I was a short-lived coalition of Christian Democrats, liberals and the extreme-right LPF; it was followed in 2003 by Cabinet Balkenende II, a coalition in which the LPF was substituted by the progressive liberals of D66.
 - 14 Another element introduced – without much debate – since implementation of New Style integration policy concerns financial implications: all costs of admission and immigration for the state are to be borne by the immigrants themselves. This means that immigrants have to pay sums of money for visas and residence permits, as well the renewal of them – this was previously unheard of. The application for a temporary residence permit costs € 430 (its renewal € 285 per family member), and for a permanent residence permit, € 890 (VluchtelingenWerk Nederland 2004).

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5 The case of Switzerland

Gianni D'Amato

1 Introduction

A small country located at the crossroads of Northern and Southern Europe, Switzerland is renowned for its neutrality and peaceful attitudes, its ethnic and linguistic diversity and a decentralised government that makes most laws at the canton level.¹ Yet there is good reason for control and integration policies to figure large. This federalist country has been challenged since its birth – in the aftermath of the successful liberal Revolution of 1848 – by centrifugal forces at the religious, regional, political, social and ideological levels. Certain foreign scholars, puzzled by Switzerland's apparent enduring stability (and overlooking a history of violent and disruptive conflicts from the civil war of 1847 until the social unrest of the 1930s), identify the source of this solidarity in the clever management of a multicultural country through its federal institutions (Schnapper 1997). Some see Switzerland as a 'paradigmatic case of political integration', the result of the state's subsidiary structure that supports both strong municipal autonomy and a comparatively high participation rate of the (male) constituency in the polity (Deutsch 1976). Others see the source of the country's stability in the successful creation of a strong national identity, which helped overcome the social distrust that arose during rapid industrialisation and was based on the country's small size and the idea that Switzerland was under permanent threat of powerful neighbouring countries, i.e. *Überfremdung* (Kohler 1994; Tanner 1998).

The fear of being demographically and culturally overrun by foreigners notwithstanding, Switzerland had one of the highest immigration rates on the continent during the twentieth century. According to the 2000 census, 22.4 per cent of the 7.4 million people comprising the total population are foreign born, and 20.5 percent, or nearly 1.5 million, are foreigners (defined here as persons with a foreign nationality). In relative terms, the number is twice as high as foreigners counted in the United States and considerably higher than those in Canada, two classic countries of immigration. In contrast to its internal pluralistic character, however, Switzerland does not consider itself as a country of immigration; it denied existence of an immigrant policy at the federal level before the 1990s (Mahnig & Wimmer 2003). This policy of prevention influenced the country's decision

not to admit any Jewish refugees after 1933, and also affected the implementation of a guest worker rotation model after the oil crisis of 1973.² Another paradox concerns the handling of admission and integration issues at the political level. Just after World War II, Switzerland was a popular destination for guest workers seeking employment in France, Germany and Italy. In the second half of the twentieth century, however, it became a home to Eastern European dissidents, Yugoslavian refugees and asylum seekers from the Middle East, Asia and Africa. In complete absence of those social hardships encountered in its neighbouring countries (high unemployment rates among migrants, ethnic and social segregation, social unrest, etc.), the immigration issue has been a contentious topic since the 1960s, winning priority over the political agenda at certain points in time.

These inconsistencies can be explained through careful analysis of how immigration and integration policies evolved in Switzerland. As such, section two of this chapter describes the process of immigration and integration during the twentieth century by way of a brief historical overview and demographic data. Section three highlights the importance of various stakeholders who influence migration policies at the different cantonal levels. This section also looks at external factors that may have affected the creation of this policy, showing how the political opportunity structures in Switzerland – influenced by federalism, municipal autonomy and a consensus-oriented political culture – impacted the formulation of immigration policies as much as various external challenges (foreign governments, the European Union) did. This chapter's conclusion discusses the different factors that may have influenced the outcome of Switzerland's particular immigration and integration policy.

2 Immigration and immigrant policies in historical perspective

Switzerland's reputation as an ideal place for exiles dates back to the sixteenth century, when the Huguenots of France were welcome as religious refugees and found their place among the cultural, political and entrepreneurial elite of Switzerland. But the modern transformation of Switzerland into a country of immigration – as it is known today – took place during its accelerated industrial take-off in the second half of the nineteenth century (Holmes 1988; Romano 1996). In contrast to its rural image, the Swiss Confederation is a European forerunner in various branches of modern mechanical and chemical industries, and has had an enormous need to invest in knowledge and infrastructures. While many rural inhabitants were leaving the country to make their living as peasants in the New World, many German intellectuals fleeing from the failed liberal revolutions of 1848-1849 found their place at the local universities. Italian craftsmen and

workers also were recruited at the end of the nineteenth and early twentieth centuries, mainly in the construction business and the railroad sector.

During the late nineteenth and early twentieth centuries, the size of the foreign population in Swiss cities increased: 41 per cent of people in Geneva, 28 per cent in Basel, and 29 per cent in Zurich were born outside Switzerland. Nationwide, Germans outnumbered the Italians and the French (Efionayi-Mäder, Niederberger & Wanner 2005). Moreover, the proportion of foreigners in the total population increased from 3 per cent in 1850 to 14.7 per cent on the eve of World War I, mostly from neighbouring countries. During the two world wars, however, the foreign population decreased significantly. By 1941, Switzerland's foreign population had dropped to 5.2 per cent (Arletta 1985).

In the liberal period preceding World War I, immigration was largely the responsibility of the cantons, whose laws had to conform to bilateral agreements signed between Switzerland and other European states. Like other agreements from this period concerning free circulation in Europe, the Swiss agreements remained open to immigrants out of a need to ensure Swiss citizens their also being easily able to emigrate to find work. However, after a first campaign against the presence of aliens in Switzerland during World War I, a new article to the Constitution appeared in 1925. The article gave the federal government the power to address immigration issues at the national level, thus providing legal basis for the existence of the federal alien's police and the Law on Residence and Settlement of Foreigners, which came into force in 1931 (Garrido 1990). This law allowed the new police, the *Fremdenpolizei*, to implement the immigration policy at discretion, although at the time their aim was maintaining national identity rather than regulating migration. Essentially, the authorities had to factor into their decisions the country's moral and economic interests as well as of *Grad der Überfremdung*, or the 'degree of over-foreignisation'. Nationwide political consensus to ensure cultural purity in Switzerland prevented the drafting of any consistent immigrant policy until very recently. Foreigners, in principle, had to leave the country and were not allowed to settle permanently.

2.1 Post-war labour migration

Shortly after World War II, the economic demands of neighbouring countries engaged in economic recovery stimulated rapid growth of the Swiss economy. In the context of the post-war economic boom, Switzerland signed a 1948 agreement with the Italian government in order to be able to recruit Italian guest workers. The workers were mainly employed in the construction sector but also in textile and machine factories. A steady flow of foreign workers immigrated to Switzerland. Their numbers increased from 285,000 in 1950 (6.1 per cent of the total population) to 585,000

(10.8 per cent) in 1960 and to 1,080,000 (17.2 per cent) in 1970. Predominantly Italian during the 1950s, the composition diversified in the 1960s. By 1970, though over 50 per cent were still Italian, about 20 per cent were natives of Germany, France and Austria, while 10 per cent were Spaniards and 4 per cent were Yugoslavs, Portuguese and Turks (Mahnig & Piguet 2003). Initially, these immigrants with temporary seasonal permits were entitled to stay for one year, though their contracts could be prolonged, which frequently happened. A similar agreement with Spain was signed in 1961.

To ensure the workers did not settle permanently and could be sent home, the period of residence required for obtaining a permanent residence permit was increased from five to ten years and restrictive conditions on family reunion were adopted. This policy was called the 'rotation model' because it meant that new workers could be brought in as others returned home. While the economy boomed throughout the 1960s, the Swiss government's guest worker system became less tightly controlled. As Switzerland faced increasing pressure from Italy to introduce more generous family reunification laws, the number of Italian workers willing to come to Switzerland decreased, while other destinations, such as Germany, became more attractive after the signing of the Roman Treaty; also, the internal economic boom and development started a wave of internal migration, particularly to destinations in Northern Italy.

It was also at this time that the Organisation for European Economic Co-operation (OEEC) introduced standards for family reunification. Other international guiding bodies, such as the International Labour Organization (ILO), also pressured the Swiss government into adopting more 'humane' family reunification policies. In response, the government began replacing its rotation system with an integration-oriented scheme that facilitated family reunification, made foreign workers more eligible for promotions and attempted to end labour market segmentation (Niederberger 2004).

Following the 1973 oil crisis, many workers became superfluous, thus having to leave the country because they lacked adequate unemployment insurance. This allowed Switzerland to 'export' its unemployed guest workers without renewing their resident permits (Katzenstein 1987). The total percentage of the foreign population fell from 17.2 per cent in 1970 to 14.8 per cent in 1980. But as the economy recovered, new guest workers arrived not only from Italy, but also from Spain, Portugal and Turkey. Their part of the population increased from 14.8 per cent (945,000 persons) in 1980 to 18.1 per cent (1,245,000 persons) in 1990 and 22.4 per cent in 2000 (nearly 1.5 million people) (Mahnig & Piguet 2003).

In the late 1970s, the government gave seasonal workers many of the same rights as guest workers who had come on longer contracts, namely the ability to transform their seasonal permits into permanent residency and to bring their families. Since the number of seasonal permits issued

did not decrease – they numbered at 130,000 per year on average between 1985 and 1995 – these permits became a gateway for permanent immigration and a means to supply cheap labour sectors of the economy, which would otherwise not have been able to survive given Switzerland's high wages. A 1982 reform of the Alien's Law was thought to regulate the transformation of permits heuristically and give permanent residents a firm hope to stay in the country. But the successful referendum of the Swiss Democrats (SD), a radical right-wing fringe party accepted by a slight majority of the population, put an end to the reform of immigration and migrant settlement laws. Seasonal permits were therefore still available until 2002.

By the time the worldwide recession of the early 1990s reached Switzerland, the unskilled and aging guest workers suffered high rates of unemployment and found it very difficult to find new jobs. This situation led to an unprecedented level of structural unemployment and poverty, one that Switzerland had not experienced in prior decades. Switzerland's larger cities, which, according to the subsidiary logic of the Swiss federal system, had to organise the welfare and find solutions, urged the federal government to act and support extended integration patterns towards immigrant workers (D'Amato & Gerber 2005). A new admission policy was needed to combine the evolving needs of a new economy with those of migration control.

2.2 *Asylum policy*

After World War II, the Swiss government recognised that its authorities had been responsible for denying admission to many Jewish refugees. The government stressed its willingness to uphold the country's humanitarian tradition and, in 1955, signed the Geneva Convention Relating to the Status of Refugees of 1951. During the next two decades, the country adopted a liberal policy, offering asylum to refugees from communist countries in Eastern Europe. In 1956, 14,000 Hungarians were allowed to settle permanently after their country's uprising against Soviet troops and, in 1968, 12,000 Czechoslovakian nationals arrived in Switzerland (Efionayi-Mäder 2003).

These people, who were often well educated, had little difficulty obtaining refugee status. The government and the public gave them a warm welcome, which is not surprising given the strong anti-communist sentiments at this time. In the mid-1970s, the arrival of a few hundred Chilean dissidents who fled Pinochet's regime ignited controversial debates about their asylum eligibility. Between 1979 and 1982, Switzerland offered protection to approximately 8,000 Vietnamese and Cambodian 'boat people',³ who were accepted on the basis of yearly quotas. Their subsequent integration

process was more difficult than that of any previous refugee group (Parini & Gianni 1997, 2005).

All these events prompted the creation of a new federal asylum policy in 1981, which codified the country's relatively generous practices. It defined the rules of the refugee status determination procedure and gave the Confederation policymaking power, while clearly giving the cantons the responsibility of implementing these policies. In domains such as welfare, education and repatriation, the power of the cantons in making refugee-related decisions was significant. As a result, there were major policy differences between the cantons.

After 1981, two trends emerged. Firstly, the number of applications, which had been steady at about 1,000 per year during the 1970s, increased exponentially. Secondly, most of the refugees – except for a large number from Poland in 1982 – came from other parts of the world: Turkey, Sri Lanka, the Middle East, Africa and Asia. Unlike the anti-communist dissidents, they were not always professional or university-educated. Some came from rural areas, some had not even finished primary school, while others had university degrees unrecognised in Europe. In addition, a weak economy made it difficult for these non-European refugees to find work. As more people from outside Europe filed applications, in the mid-1980s, asylum had become a sensitive subject. In public debates, refugees were called 'asylum seekers' or the derogatory term 'asylants' to indicate they did not deserve refugee status. Since the 1981 law's subsequent revisions created stricter procedures, the government gradually started accepting fewer asylum requests, even from people fleeing civil wars and violence. As a rough indicator of this trend, positive answers to applications averaged at 86 per cent between 1975 and 1979. This number dropped to an average of 47 per cent between 1980 and 1984, and again to an average of 6 per cent between 1985 and 1990 (Efionayi-Mäder et al. 2005).

3 Immigration policies and policymaking

Since immigration and integration policies in Switzerland are intrinsically bound, this section will first present the main actors of policymaking and then discuss the recent changes in admission, asylum, integration and naturalisation policies.

3.1 The actors of policymaking

Until 2005, two federal offices within the Federal Department of Justice and Police dealt with 'foreigners' living in Switzerland: the Federal Office for Refugees (FOR) and the Federal Office for Immigration, Integration and Emigration (IMES). The first office was introduced in 1991 in reaction

to the influx of asylum seekers since the 1980s. The second federal office was founded in the year 2000, albeit with beginnings dating back to the implementation of the Law on Residence and Settlement of Foreigners of 1931. Its main task was to prevent the 'over-foreignisation' of Switzerland and to enforce insertion policies for foreigners. These two federal offices became one entity, when merged into the Federal Office for Migration (FOM) on 1 January 2005. One branch in the new FOM continues to be responsible for implementation of Swiss asylum policy. Another picks up where IMES left off, implementing the admission policy, which includes the enforcement of laws regarding residence in Switzerland (immigration and residence section) and assessing labour market needs (labour market section). The changes within the organisational structure of the federal office reflect the will to implement a coherent policy on foreigners, comprising admission, stay and integration (Efionayi-Mäder, Lavenex, Niederberger, Wanner & Wichmann 2003).

The State Secretariat for Economic Affairs (SECO), which is a part of the Federal Department of Economic Affairs (DEA), is the government agency responsible for questions about economics and labour. SECO has influenced Swiss labour migration policy since 1945 by determining the qualitative and quantitative needs of the market.

At the federal level, there are three important permanent commissions, namely the Federal Commission for Foreigners (FCF), the Federal Commission against Racism (FCR) and the Federal Commission for Refugees (CFR). The FCF was set up as an expert commission of the Swiss Federal Council in 1970; it reports directly to the Federal Department of Justice and Police.

The FCF's central concern is the integration of foreigners. Since 2001, funds have been available for projects promoting integration. At present, the FCF comprises 28 members, two of whom hold observer status. The members are representatives of various foreigners' organisations, municipalities, communities, cantons, employers and employees and churches, or have a professional background in implementing integration policies. The FCF assists in promoting the creation of educational and vocational opportunities for foreigners and in the recognition of professional training in cooperation with the relevant cantonal authorities; it participates in the international exchange of views and experience; it mediates between organisations that are active in the field of cooperation and the federal authorities; it publishes opinions and recommendations regarding general issues of migration; and, moreover, it is consulted on questions of migration during legislative proceedings.

In 2008, the FCF and the CFR were merged into one commission, the Federal Commission on Migration (FCM). Both the FCM and the FCR hold meetings on a quarterly basis. They organise joint events, such as the national conference on the revision of the law on naturalisation. The

Federal Commission Against Racism is part of the Federal Department of Home Affairs (DHA). Within the DHA, there is the Service de Lutte contre le Racisme, an interlocutor that coordinates the activities of various actors participating in the fight against racism. Amongst other activities, it administers a fund for anti-racism projects. The CFR is an advisory body to the government and to the ministries working on refugee issues.

All these commissions form an important interest group in the consultation of new laws, insofar as Switzerland leaves a significant part of decision-making to institutions of direct democracy. In particular, in the area of migration policy, political processes and policymaking are dominated by pre-parliamentarian negotiations and direct democracy, while Parliament plays a secondary role (Mahnig 1996). Significantly, the two levels of policymaking and political process are also characterised by different political styles (Neidhart 1970). While in pre-parliamentarian negotiations the compromise is the final objective of the consultation process, in which expert commissions can play a decisive role, the arena of direct democracy is mainly determined by confrontational attitudes and divisive outcomes.

At the federal level, Switzerland's most important political parties are the 'centrist block' composed of the Christian Democrats (CVP), the Swiss People's Party (SVP), the Liberal-Democratic Party (FDP) and the left-wing parties, namely the Social Democrats (SPS) and the Green Party (GP). With the exception of the GP, all parties are members of the government. The SVP is an important stakeholder in the debates on migration and asylum policy. Formerly the party of artisans and peasants, it changed into a radical modern populist party once the charismatic lawyer and entrepreneur Christoph Blocher took over its Zurich branch in the late 1970s. The SVP supported a popular initiative aiming to reduce the number of residents illegally residing in Switzerland and was in charge of an initiative taken against 'asylum abuse'. In Zurich, the party launched an initiative demanding that all requests for naturalisation be subject to popular referendum.

Trade unions and employer's representatives also play a role in the formulation of Swiss immigration policy. They exert their influence both in a formal manner, via the consultation procedure, and informally, by determining the quota of foreigners allowed into Switzerland. Due to the state's federal structure, the cantons are very influential actors in the formulation of governmental policies as well. The cantons' sphere of authority, when it comes to policies affecting foreigners, includes the alien's police and is focused on determining the needs of the labour market. Furthermore, the cantons are responsible for the implementation of integration measures. As the Confederation does not have a federal police, the cantons are responsible for maintaining public order and enforcing decisions involving repatriation. Thus, it is through their competence and experience in implementing measures concerning asylum seekers that the cantons contribute significantly to the formulation of Swiss policy in this area. The Conference of Cantonal

Ministers of Justice and Police (CCMJP) has become increasingly vocal on its position on questions of interior security (e.g. concerning crimes committed by foreigners) and asylum.

Cooperation with the municipalities is important as the municipalities are responsible for the accommodation of asylum seekers and refugees, and must pay for costs associated with the social welfare of regular immigrants. Their point of view is that their concerns are not sufficiently taken into consideration in the formulation and implementation of asylum and immigration policies. Larger cities, notably Zurich, have recently launched spontaneous initiatives on the asylum issue inciting major debate. Smaller municipalities have also been in the headlines recently: one municipality refused to accommodate the requested number of asylum seekers; others have banned access to public areas such as schools, playgrounds and soccer fields.

NGOs also play a role in implementing Swiss asylum policy. They offer social counselling and legal advice to asylum seekers. The Swiss Refugee Council (the Schweizerische Flüchtlingshilfe, known as the SFH) is an umbrella organisation of Swiss asylum organisations that seeks to exert influence on political decision-making by publishing position papers on various asylum-related questions.

Other NGOs in the asylum field include charity organisations Caritas and Swiss Interchurch Aid (HEKS) and the Swiss Red Cross. March 2001 saw creation of the Forum pour l'Intégration des Migrants et des Migrants (FIMM Suisse). Composed of 330 representatives, FIMM is the umbrella organisation of all foreigners' associations in Switzerland. It organises public debates on issues concerning foreigners in Switzerland (e.g. Schengen agreements), collaborates with the federal authorities (FOM, FCM) and participates in the consultation procedure. It is partially financed by the FCM.

3.2 Recent changes in immigration policies

The following paragraphs describe how the different interest groups consult with the federal administration during the policymaking process in Parliament and, not least of all, through the means provided by direct democracy.

There have been two major changes in the last few years regarding regular immigration. First, June 2002 saw entry into force of the Bilateral Agreement on the Free Movement of Persons between Switzerland and the EU member states. Second came an admission policy applicable to third-country nationals that would prove more restrictive than the policy Switzerland had pursued thus far, resulting in admitting 'only urgently required qualified workers' from outside the EU/EFTA area. At present, work permits are only issued to executives, specialists and other highly

qualified workers from outside the EU/EFTA area if no Swiss or EU national meets the requirements. When issuing residence permits, the authorities further consider candidates' professional qualifications, their ability to adapt to professional requirements, language skills and age. If a person meets the criteria established in these areas, he or she should, in theory, be able to achieve sustainable integration into the Swiss labour market and the social environment (Efionayi-Mäder et al. 2003).

In 2005, the draft for a new Alien's Law was under discussion in both chambers of Parliament. At the end of 2006, it was passed despite a referendum that wanted to prevent the introduction of a two-class admission system between EU and non-EU immigrants. During the hearings, it became evident that this bill would cause sharply polarised campaigns, not to mention that the last attempt, in 1982, to reform the Alien's Law had been doomed to failure. At the time, the reform was only supported by the CVP and the FDP, while the SVP did not want to introduce any improvement for third-country nationals, denying them the opportunity of family reunification. The political left – notably, the SPS, the GP and the unions – criticised the discriminatory partitioning of foreigners into two categories, which vividly evoked old initiatives that had been rejected by the population. When finally presented in Parliament, the bill was challenged by left and right parties for different reasons: the former beseeching equal treatment of all foreigners; the latter seeking more effective combat of abuses to foreigners' laws and the abolishment of prospects for family reunification.

A few representatives from the political right were particularly irritated that the Swiss National Council (the Nationalrat, which represents the people) had passed a special regulation concerning undocumented migrants who had resided illegally in the country for over four years. The regulation specified that these *sans-papiers* should, for humanitarian reasons, have the opportunity to request their residence be legally authorised in the near future. Curiously enough, no irritation was caused by a simultaneously proposed, albeit unsuccessful, motion by an SVP MP promoting the hiring of unqualified third-country nationals as seasonal workers in branches of the economy such as the farming, tourism and construction industries. From then on, the allocation of a residence permit would be contingent on attending integration courses that were, against the SVP's will, subsidised by the federal government. The National Council also passed clauses against migrants partaking in marriages of convenience, smugglers and illegal migrants, and introduced carrier sanctions at Swiss airports on all airlines transporting passengers without valid papers.

The Alien's Law was ratified by the National Council with support from the CVP and the FDP. The SPS also approved this bill, mostly not to hinder further negotiations and to prevent a more restrictive interpretation from emerging. The GP and the SVP refused to support the law for

opposite reasons: the former out of human rights concerns; the latter because the bill was not strict enough to fight abuses. In December 2003, the new Federal Council thus elected a council member to be responsible for migration issues, Minister of Justice Christoph Blocher (SVP) who would present a more restrictive version of the bill in the Swiss Council of States.

The Council of States, Parliament's second chamber representing the cantons, voted for a more severe interpretation of the bill. Led by a CVP-FDP majority, the Council of States cancelled all mandatory provisions in the Alien's Law. Persons with a residence permit would no longer be allowed automatic family reunification; permission for this would remain at the discretion of the cantons. A special regulation concerning *sans papiers* was also abolished, as Blocher argued that, with the exception hardship cases, all illegal immigrants should leave the country. Impeded thus were both laws, that concerning family reunification and that pertaining to regularising *sans papiers*. To facilitate the integration of young persons reunited with their families, however, the age at which a permanent residence permit could be claimed was lowered from fourteen to twelve.

In the second reading, the National Council joined in the interpretation of the Council of States, also abolishing the article allowing a limited number of unqualified persons to enter the country. The SPS-GP parliamentary party announced a referendum against this bill, which was supported by migrant associations, notably the umbrella organisation FIMM. The erstwhile FCF published a report expressing concern about the severe interpretation of integration measures. Together with the revised Asylum Law, the bill was submitted to a referendum that was won by the government in September 2006. The more restrictive law passed all procedures and took effect in 2008.

In quantitative terms, the new bill – like the old law – paves a path for authorities to pursue a more permissive or more restrictive admission policy as necessary. The decisive factors for determining Switzerland's quotas of admittees from outside the EU/EFTA are the current economic situation and the need for labour in certain segments of the market. The authorities will continue to be able to adopt a quota for third-country nationals (*Kontingentierung*).

The policy's basic principle is that admission must serve the interest of the entire economy, not on the basis of particular interests. As such, professional qualifications and the ability to integrate should play decisive roles. Moreover, admission must take Switzerland's social and demographic needs into account. In contrast to regulations present in the old Alien's Law, a controlled opening of the market to self-employed people is foreseen in the law if the activity is likely to stimulate competition. Increased competition should promote the efficiency of the economy and, in the long run, guarantee the international competitiveness of Swiss companies. When labour market needs were reassessed in the 1990s, post-war migration

policy was identified as one of the main reasons for reduced investments and a decline of Swiss competitiveness in various new industrial branches (Blattner & Sheldon 1989; Sheldon 1998).

On the one hand, the new Alien's Law constitutes a higher barrier for nationals of non-EU/EFTA states to enter Switzerland. On the other hand, the situation for foreigners who lawfully and permanently reside in Switzerland will be improved through better opportunities to change occupations, jobs or cantons. The subsequent immigration of families of short-term residents and students is also to be permitted, provided that residential and financial requirements be satisfied. These measures facilitate integration, simplify procedures for the employers and authorities and ensure uniform application of the law. In the aforementioned areas, the law aims to harmonise the rules applicable to third-country nationals with those applicable to EU/EFTA nationals (Efionayi-Mäder et al. 2003).

3.3 *Recent changes in asylum policies*

As elsewhere in Western Europe, asylum migration increasingly gained importance during the 1980s. Labour migration seeped into the public discourse since its issues had manifold moral, political and judicial implications. Although asylum recognition rates decreased in the 1990s, many asylum seekers were able to remain in Switzerland under subsidiary protection or for humanitarian reasons. While their rights were restricted during a period of time that was regulated by the canton – their access to the labour market and welfare were limited and family reunification was forbidden – most of those granted protection were later able to settle permanently. In the 1990s, war in the former Yugoslavia prompted a massive influx of asylum seekers from Bosnia and Kosovo, many of whom had family ties in Switzerland from labour migration that began in the 1960s. Between 1990 and 2002, Switzerland received 146,587 asylum applications from the war-torn Balkans. According to the Swiss Federal Office for Migration, some 10,000 persons were granted asylum, and 62,000 received temporary or subsidiary protection over the course of several years (Kaya 2005).

The Swiss public became concerned about the increasing number of asylum applications, largely because the economy was in recession and unemployment was on the rise. Thus, the federal government adopted administrative and legal measures to speed up the processing of applications and the implementation of decisions. And after numerous partial revisions, a completely revised Asylum Law came into force in 1999. Among the many changes making it more restrictive, this law introduced new grounds for non-admission to the regular asylum procedure. This meant that applicants who stayed in the country illegally prior to their request or who did not submit travel or identity documents would generally be refused asylum. On the other hand – and as a concession to humanitarian arguments – the

law now allowed temporary collective protection of war refugees, giving Kosovars and Bosnians temporary admission.

Most asylum seekers from Bosnia and Kosovo had to leave Switzerland after the conflicts ended in 1995 and 1999, respectively. Those who returned home, including some who waited several years to do so, benefited from a return programme consisting of financial support, building materials and assistance for their home communities. An estimated 40,000 to 60,000 persons from Bosnia and Serbia and Montenegro returned home, either with or without aid from the Swiss government, while approximately 10,000 with refugee status from the former Yugoslavia stayed. No reliable figures are available for the number of asylum seekers from Bosnia and Kosovo who remained in the country illegally (Efionayi-Mäder et al. 2005).

Despite the steady decrease in asylum requests – in 2003 the number of requests fell nearly 20 per cent from the prior year, or 20,806 in absolute numbers – the SVP continued to battle asylum inflows. Since their initiative against asylum abuses did not pass the ballot in 2002 (they lost with the narrowest result in Swiss history: 49.9 per cent), the party tried to detect new fields of operation. As a moral winner, the SVP demanded a new asylum initiative in June 2003, seeing as it did not expect any revolutionary improvements from the parliamentary revision. This initiative by SVP chairman Blocher, also still MP at the time, provoked the other parties. They condemned SVP procedures as being a form of ‘blackmailing’, not to mention pure election campaign strategy. The other parties responded with a revision of the Asylum Law, expressing the will to transfer competences for asylum matters completely to the federal level. Another idea was to exclude uncooperative and liable asylum seekers at the beginning of the asylum procedure as well as those who stayed in the country illegally. They were to be punished with a prison sentence or expulsion (NZZ 11 June 2003, 15 September 2003).⁴

In reaction to the unexpected success of the SVP’s initiative against abuses, the Political Institutions Committee of the National Council decided against revising the Alien’s Law first, and the Asylum Law second, as had been originally intended. They wanted to take both revisions to the vote simultaneously. Meanwhile, the SVP had plans to bring forward a revision of the Asylum Law, though with no success (NZZ 10 January 2003).

The government realistically interpreted the population’s sceptical attitude towards their asylum policy, yet the decreasing number of asylum requests no longer supported this interpretation *de facto*. Support from the people was to be regained by means of a new asylum law. Therefore, asylum seekers whose request could not be accommodated in the future would be treated as illegal foreigners without any rights to claim social welfare benefits. They were transferred to the less attractive though constitutionally

protected emergency aid, which is submitted to continuous administrative controls. From this procedure, the government anticipated additional annual savings of approximately 77 million CHF, as well as an increase in the number of repatriations and Switzerland's loss of attraction as a destination country. However, only a few years before had the cantons and cities refused to support a similar measure, fearing the impact it would have on their housing costs (cantons and municipalities are responsible for emergency aid) (*NZZ* 13 February 2003, 14 February 2003, 5 April 2003). But with the SVP's electoral success, the mood in Parliament shifted, producing a more restrictive policy.

The National Council affirmed the third-country regulations with a strong majority and support of the centre-right parties. Consequently, Switzerland would stop accepting asylum requests in the future if an applicant had already received a negative response in an EU or EES country. It also approved the concept of humanitarian admission. Neither the SVP's proposal favouring stricter admission requirements nor those of the social democrats and the ecologists that privileged more unconstrained measures, however, were taken into account. Hence, the humanitarian admission program would be granted only in cases where expulsion was not allowed for humanitarian reasons and the person in question was in a state of serious need. Further on, the admission programme foresaw the right to reunify the families under certain conditions and also granted a facilitated access to the labour market.

In the final vote, the National Council accepted the revision of the Asylum Law with 98 to 49 votes and 30 abstentions. CVP and FDP favoured the bill without any exception; the GP was just as opposed to it. Two thirds of the SPS members in the National Council were also in favour of the revision. The majority of the SVP was against it; and most abstentions also came from this party (*NZZ* 31 August 2004).

However, Blocher, at that time elected by Parliament as a new Federal Councillor, was dissatisfied with approved changes of the National Council and introduced modification requests concerning consultation of the Council of States. The Minister of Justice pleaded for various measures including: tightening the eviction order, expanding territorial bans, introducing short-term arrests, tightening decisions concerning *sans-papiers*, abolishing humanitarian admission and collecting charges should asylum seekers request to reevaluate admission procedures. When consulted, the cantons welcomed these innovations, with coercive measures encountering especially wide consensus. Notably, the cantons agreed less with the financial consequences of a system change, particularly regarding humanitarian assistance. While welfare organisations, the UNHCR, churches, the SPS, the GP and five cantons voiced fundamental doubts about this revision, the FDP and the CVP by and large supported the change, even if they had reservations about some paragraphs. The SVP supported Blocher's

suggestions unflinchingly, while wishing for stricter measures still. At the end of August, the Federal Council had endorsed Blocher's argumentation in toto, but refused to support the expansion of eviction orders or the abolishment of humanitarian admission (*NZZ* 1 July 2004, 21 July 2004 (argumentation of the churches), 22 July 2004 (argumentation of local authorities association), 28 July 2004 (argumentation of the UNHCR), 6 August 2004 (argumentation of cantons)).

The Council of States did not disappoint the Federal Council or the cantons when their turn came, speaking out for a sharper asylum law in the spring 2005 debate (*NZZ* 18 March 2005). However, the fact that Blocher had proposed his amendments in an accelerated proceeding caused resentment to prevail. A rejection request from SPS member of the Council of States Simonetta Sommaruga, asking for an examination of the amendments' conformity with requirements of the Constitution and international law, did not stand a chance. In reaction, Blocher stated that none of his suggestions so far were rejected by either the Federal Council or internal experts on the charge that they contradicted international law. Finally, the political institution committee's decision corresponded to the cantons' desire for stricter interpretation of the Asylum Law, asking for a coercive detention, which could be expanded up to two years. Switzerland was the only state in Europe to reject the new status of humanitarian admission because of the automatic family reunification programme originally included in its proposal. For hardship cases, the Council of States wanted to apply provisional admission. Thus, the cantons could grant labour market access to persons whose return was inadmissible, unreasonable or impossible and, moreover, who were socially integrated. However, if at the beginning of the asylum process no passport or identity card could be submitted to the authorities, but only a document such as a birth certificate or a driver's license, any asylum requests by the applicant would no longer be considered. If persecution in the country of origin could be convincingly proven, the asylum proceeding would remain open. This last point was criticised by the political left and some members of central-right parties as being disproportionate and unconstitutional. The left also resisted – in vain – the freezing of social welfare assistance to rejected asylum seekers. The new law foresaw only emergency support for this group, which anyway could always be denied to uncooperative asylum seekers (*NZZ* 18 March 2005).

Federal Councillor Blocher's argumentation passed the Council of States and the second reading in the National Council with a large majority. Daily newspaper *Neue Zürcher Zeitung* (*NZZ*) noted with astonishment how unanimously all centre-right parties stood behind Bundesrat Blocher and expressed surprise over the fact that no further suggestions were introduced in the formulation of a future migration policy. This seemed to prove

how much the mood had changed after Christoph Blocher had taken over the justice department. Today bills are passed with large majorities whereas a few years ago they would have caused even doubt and refusal in the political centre-right camp. The left, the charitable organizations and the churches have not reacted to these changes and, furthermore, practically oppose all changes in the whole country instead of focusing on some really problematic reinforcement of the law. (NZZ 28 September 2005, translated by the author)

Together with the Alien's Law, the Asylum Law was submitted to a popular referendum and passed the ballot with a 3-to-1 vote in September 2006, subsequently coming into operation 2008.

3.4 *Recent changes in integration policies*

When the Swiss government dropped its rotation policy in the early 1960s, it recognised that the only alternative could be a policy of integration. However, the belief – both then and now – is that integration takes place naturally, on the labour market and at schools, as well as in associations, labour unions, clubs, churches, neighbourhoods and through other informal networks (Niederberger 2004). Since the 1970s, the Confederation's main integration policy has been aiming to improve the legal status of immigrants, reuniting families more quickly and granting immigrants a more secure status. To facilitate the integration of foreigners and to respond to the public's concerns about them, in 1970, the government established the Federal FCF, now known as the FCM (see section 3.1). Promoting the co-existence of foreign and native populations, the commission brings together municipalities, communities, cantons, foreigners' organisations, employers and employees and churches. The FCM cooperates with cantonal and communal authorities, immigrant services and immigration actors, such as charities and economic associations. It also publishes opinions and recommendations regarding general issues on migration and provides testimony for political debates on migration-related policy.

After strong lobbying by cities during the economic crisis of the 1990s, the Swiss alien policy adapted to the new reality, considering the integration of foreigners a prerequisite for achieving a politically and socially sustainable immigration policy. 'Integration' here referred to the participation of foreigners in economic, social and cultural life. The integration article in the old Alien's Law, passed in 1999, paved the way for a more proactive federal integration policy; it also strengthened the former FCF's role. Since 2001, the government has spent an annual 10-12 million CHF (€ 6-€ 7 million) to support integration projects, including language and integration courses and training for integration leaders. Cantons and larger municipalities also have their own integration and intercultural cooperation committees

and offices, which offer language and integration courses. In many communities, foreigners participate on school boards and, in some cases, the municipal government. With the support of consulates and the local education department, larger communities offer courses in immigrant children's native languages and cultures. While churches prove to be among the major institutions promoting coexistence of the Swiss and the foreign population, other non-governmental organisations have become more interested in the process as well.

The aforementioned new Alien's Law of 2008 foresees that candidates for immigration fulfil certain criteria to facilitate their integration. This restrictive component corresponds in its content to the criterion of highly qualified immigration. Level of education and professional qualifications are thought to improve the integration of foreigners and guarantee their vocational reintegration in cases of unemployment. The restriction aims to avoid repeating past errors, e.g. granting temporary work permits to low-qualified seasonal workers. In fact, the new Alien's Law abolishes the status of seasonal workers. Furthermore, it explicitly foresees that it is the immigrant's duty to make every effort necessary to facilitate his or her own integration. Permanent residents and their families are required to integrate on both professional and social levels (Efionayi-Mäder et al. 2003).

The Swiss government has a budget available to fund projects that promote integration. New instruments have been adopted to coordinate measures at the federal and cantonal levels. Cantons have had to establish integration offices and launch projects that promote linguistic, professional and other forms of integration. A first round of projects to promote integration has already been implemented.

3.5 *Recent changes in naturalisation policies*

Persons who have resided in Switzerland for twelve years – those spent between the completed tenth and twentieth years are counted double for this purpose – may apply for naturalisation. The Federal Office for Migration examines whether applicants are integrated into 'the Swiss way of life', are familiar with Swiss customs and traditions, comply with Swiss laws and do not endanger Switzerland's internal or external security. In particular, this examination is based on cantonal and communal reports. If the requirements provided by the federal law are satisfied, applicants are entitled to obtain a federal naturalisation permit from the Federal Office for Migration (Wanner & D'Amato 2003).

Naturalisation proceeds in three stages. The federal naturalisation permit is thus seen merely as the Confederation's green light for acquisition of Swiss nationality. The cantons and communities have their own, additional residence requirements that applicants must satisfy once federal preconditions are satisfied. Once the federal naturalisation permit is obtained, only

those applicants naturalised by their communities and cantons acquire Swiss citizenship. As a general rule, there is no legally protected right to being naturalised by a community and a canton. The cantons' criteria, as well as the way in which they decide who gets citizenship, vary greatly. For example, in Nidwalden, applicants must have spent the entire twelve-year period in the canton. In Geneva, two years of residence are sufficient and candidates having moved from other cantons fulfil the federal preconditions. The requirements at the communal level can vary greatly as well.

In three referenda passed over the last twenty years (1983, 1994, 2004), Swiss voters and the majority of the cantons rejected laws that would have made it easier for the children of immigrants to become naturalised. The law submitted to a referendum in 2004 would have allowed the Swiss-born grandchild of a foreign resident to gain Swiss citizenship automatically at birth. The main reason for this new provision was that automatic naturalisation would have eliminated the community's decision-making role, which many Swiss considered an important step in the political process. Over the last 50 years, naturalisation rates have stayed lower than federal authorities have desired probably because many immigrants decided to return to their home countries after working in Switzerland. In 1992, dual citizenship became permitted. Between 1991 and 2001, the number of naturalisations increased from 8,757 to 37,070. Nationals from the former Yugoslavia, mostly from Kosovo and Bosnia, were the quickest to naturalise, having little interest in returning to the unstable political situation in their home country. Also, having Swiss citizenship would mean they could never be forced to return. Yet, citizenship is not always necessary for voting in local elections. In several French-speaking cantons, foreigners who have lived in the canton for many years have the right to vote at the municipal level and, in a few cantons, even on cantonal matters. The 2004 introduction of this legal innovation led to hotly debated controversy on the significance of citizenship.

As already mentioned, in 2002, Swiss Parliament debated the revision of the citizenship law for a third time. In the detailed consultation process, there were violent criticisms of suggestions presented by the Federal Council and the CVP to shorten the minimum residence requirements. The SPS and the GP claimed a reduction of six years, while the SVP and a majority of the FDP wanted to maintain the present twelve years. When it came to regulations to facilitate naturalisation of the second generation, the SVP demanded severer legislation. The party was of the opinion that only those born in the country should profit from easier access to citizenship, as opposed to young people who had only spent over half their school life in Switzerland. The National Council rejected this proposal. Though the SVP rejected it, the SPS, the liberal FDP, the CVP and the GP all supported the Federal Council's new regulation to introduce a facilitated naturalisation.

When the discussion shifted to whether or not citizenship should automatically be given to children of the third generation (introducing the principle of *jus soli*), the debate became strongly polarised. Such a legal innovation was categorically rejected by the SVP. On the other hand, the CVP and the FDP were reluctant to limit the rights of parents in this manner. The FDP thus wished to make the right to naturalise contingent to a request by both parents. In the end, the CVP's proposal found much support through the argument that parents could renounce their child's citizenship at birth, and that the child was free to revoke the decision upon reaching the age of majority. Against the acrimonious resistance of the SVP, the National Council also approved the right to protest for those whose request was rejected in municipalities without reason. At the end of the consultations, the SVP announced their wish to initiate a referendum against this revision (NZZ 17 September 2002).

Shortly after this debate, discussion about granting easier access to citizenship was influenced by a Federal Tribunal decision in Lausanne. The judges deemed the concession of citizenship for reasons of origin or religion unconstitutional because it violated the principal of non-discrimination and thereby ordered municipalities to adopt a procedure that did not contradict the Constitution. In their written justification, the judges declared that no immigrant had an automatic right to be naturalised, but that in certain municipalities voting on applicants was an administrative function since the status of inhabitants was being decided upon. This type of function would require authorities and the population, both, to respect the prohibition of discrimination (NZZ 10 July 2003, 25 July 2003).

Many experts and the political left voiced support for this judgment. The political centre expressed consternation about such a verdict only a few weeks before the general elections. The SVP protested vociferously against the limitation of sovereignty and municipal autonomy, which, in their eyes, gave the impression of a partisan decision. This question became a major topic in the 2003 election campaign, criticising all those judges who act against the will of the people. A party convention held a few days before the elections launched a political initiative demanding that naturalisations be made at the discretion of the people. In the opinion of the SVP, naturalisations were political, rather than administrative acts.

Both chambers of Parliament passed the bill with practically no alterations. In the final round, only the SVP voted unanimously against the new regulations, disapproving of easier access for the second generation, *jus soli* for the third generation and the right to judicial complaints for rejectees. The latter point was also supported by a large minority of the FDP.

On 26 September 2004, the referendum took place. Advocates of the change, the CVP, the SPS and the liberal FDP offered only little propaganda, underestimating its importance in support of the SVP campaign. Demoscopic analysis let them presume that they would win the

referendum. And yet, the winds changed just days before voting day. Support from employers' associations and unions was not powerful enough. Then newly elected Federal Councillor Blocher should have supported the bill since it came from his ministry, though he sabotaged it during his campaign and imparted only technical information about the new provisions to a restricted audience.

With a rather high referendum attendance (54 per cent voting rate), the majority of the people and the cantons rejected the reform on the citizenship law. The introduction of a facilitated naturalisation was refused by a majority of 57 per cent, as was automatic naturalisation of the third generation at birth by 51.6 per cent. Interestingly, the rollback closely compared to the referendum of 1994: with the exception of Basel-City, all other Swiss-German cantons that had approved a more liberal application of the naturalisation law ten years earlier had now switched camps (*NZZ* 27 September 2004). There are two explanations for this rollback: the parties that had favoured this issue in Parliament (SPS, CVP, FDP) did not commit themselves to defending facilitated access to citizenship during the voting campaign. Spellbound by promising polls, they were surprised by how easily and successfully the SVP, in the last few weeks before voting, were able to mobilise fear with the question of granting valued citizenship to non-deserving young immigrants. They defined an automatic acquisition of nationality as a devaluation of Swiss citizenship and objected to the weakening of local popular sovereignty that it implied (Kaya 2005). And this time, the reformed law was not backed by the responsible department and its staff, which formerly had envisioned this change.

4 Analysis of the policymaking process

In order to understand the Swiss policymaking process, three distinct features of the national polity must be taken into consideration: the federal structure of the state; the financial and political autonomy of municipalities; and a tool of intervention secured by the consociational negotiations of interest groups and the participation of the people through direct democracy.

4.1 *Federalism*

It is primarily through the institutions of federalism that Switzerland succeeded in accommodating its cultural and religious diversity. The country is a confederation of 23 cantons, which have a large measure of autonomy in regards to education policy, police and taxes. According to this principle, the Swiss Parliament functions on two levels: the National Council and the Council of States. New laws must be passed by both chambers,

but can be immediately vetoed by a popular referendum with 50,000 signatures.

The mechanisms of decision-making in Switzerland are complex. The Swiss population does not directly elect the members of the government, i.e. the Federal Council, as it does at the cantonal level; at the federal level, election of the government is the prerogative of the Parliament. The seven members of the Federal Council are elected for four years. In the Swiss political system, Parliament cannot give and withdraw a vote of confidence to the Federal Council. This gives the government a certain amount of autonomy with regard to the Parliament. However, the autonomy of the government is restricted by the two instruments of Swiss direct democracy: the referendum and the popular initiative. The popular initiative gives citizens the right to seek a decision on an amendment they want integrated into the Constitution. For such an initiative to be organised, the signatures of 100,000 voters must be collected within eighteen months. Federal laws are subject to an optional referendum: in this case, a popular ballot is cast if 50,000 citizens request such an action. The signatures must be collected within 100 days of a decree's publication. The referendum is similar to a veto. For such a plebiscite to pass, the majority of the population's votes and those of nine cantons is required. At the cantonal and municipal levels, voters can also launch initiatives. Cantonal laws are subject to the optional referendum.

When it comes to the admission and integration of migrants, federalism plays an important role in many domains. They include, among others, the field of education, which is presented here as a paradigmatic case (religious matters or the quest for political rights would also have served this purpose). Switzerland's educational system is organised through the cantons, which desire immigrants to adopt the dominant cantonal language and culture. During the 1970s, cantonal education systems had difficulty accommodating the differing social and cultural situations and thus could not guarantee equal educational opportunities (Schuh 1987). A lot of discrepancy in the quality of curricula across schools continues to persist, even if the federal education authorities, known as the Schweizerische Konferenz der kantonalen Erziehungsdirektoren (EDK), regularly publish recommendations for the better integration of immigrant children (EDK 1972, 1976, 1982, 1985, 1991, 1993, 1995a, 1995b, 2003). Some cantons, more than others, support immigrant children and promote their integration at school by investing more resources in local schools and introducing institution-wide changes such as team-teaching and intercultural programmes that favour the insertion of children with a migrant background (Truniger 2002b). Not all cantons implement these recommendations and, in fact, several tend towards discriminatory practices. Contrasting cantonal responses roughly correspond to linguistic as well as political cleavages. In German-speaking cantons one can generally observe a tendency to set up institutions

specifically for immigrant children, with the exception of those urban cantons possessing necessary tools to support their school bodies without enforcing segregation (Truniger 2002a), whereas in French- and Italian-speaking areas, the response has been to integrate all children into mainstream institutions.

In this analysis, the cantonal level merits special attention, as Switzerland's highly federalised institutional system is characterised by vertical segmentation and horizontal fragmentation that allows both institutions and cantonal parties a high degree of organisational and political autonomy. As witnessed with voting, cantons can use their autonomy to experiment with various approaches in migrant-related political fields and to try to influence decision-making at the federal level. The Council of States makes it necessary for federal authorities to secure the loyalty of the cantons and to make sure that strong cantonal political entrepreneurs do not withdraw from the consensus. If the perception the cantons hold internally changes, the federal level must thus adapt. But only until recently, when the general mood became anti-immigrant, the example of the autonomous educational system had made it clear that cantons have enough space to manoeuvre and need not share a common approach to all fields related to migrants.

4.2 *Municipal autonomy*

Strong trade and political fragmentation explain why Switzerland has a relatively robust urban network. Moreover, municipal autonomy is a key factor when it comes to questions of citizenship and, paradoxically, of nationhood. As already mentioned, there are three stages in the naturalisation process: citizenship within the municipality, then the canton and finally at the Swiss federal state.

There is great variety in naturalisation practices at the local level, particularly between the German- and French-speaking cantons. While the French have more formalised procedures, many German cantons endorse the romantic principle of adherence and political participation. The question of who is allowed to acquire citizenship can easily be turned into a question of preferential treatment and prejudice. Newspaper stories have reported that in several small German-speaking towns, applicants recognised as having Eastern European and Asian origins were prevented from naturalising (Ehrenzeller & Good 2003; Leuthold & Aeberhard 2002). So even if the country was founded on the idea of political contract, naturalisation is to a large extent based on local ethnicity.

Furthermore, since the decision by the Federal Tribunal⁵ on 9 July 2003 (reference 1P.228-2000), which declared public votes on naturalisation in certain municipalities unconstitutional, a new debate has emerged on the role of judicial authority. It is largely a debate between those who favour

the rule of law and those who interpret access to citizenship as a political and sovereign act of the citizenry. The Political Institution Committee of the Council of States has supported the Federal Tribunal in their reaction to the right of municipalities to submit the requests of candidates for naturalisation to the people in order to respect the autonomy of cantons and municipalities, as recognised in the Federal Constitution. This judgement was quite exceptional and can be read as an indicator of tension between Federal Tribunal and Parliament, between the opportunities and limits of the rule of law as much as those of people's rights within a direct democracy.

4.3 *Consociationalism and direct democracy*

Consociationalism and direct democracy are more important for understanding Switzerland's integration politics than integration policies. But, as Mahnig and Wimmer (2003) stated in their lucid article, these two characteristics of the Swiss political system are responsible for the country's intense politicisation of migration issues and the exclusion of migrants from political participation. Consociationalism refers to the proportional representation of different minorities (e.g. linguistic, political, religious) in the federal institutions and reaching compromise between political forces that goes beyond the search for simple majorities (Linder 1998). All members of the government as well as the higher administration are proportionately chosen according to their party affiliation (based on a 'magic formula') and their linguistic and regional origins. Swiss politics is characterised by a permanent process of compromise-building between these groups. Another important means to influence the political decision-making process is the consultation procedure, the phase in legislative preparation when draft acts by the Confederation are evaluated by the cantons, parties, associations and sometimes also by other interested circles throughout Switzerland, in order to ascertain the likelihood of their acceptance and implementation. Persons not invited to take part in the consultation procedure can also state their views on a proposal. All views and possible objections are evaluated with a view to the vetoing power of those who reject a reform. The Federal Council then passes the main points of its proposal on to Parliament, and debates the draft act in light of the outcomes of this consultation.

Direct democracy gives social groups some opportunities to participate directly in the political process through the aforementioned popular initiative and referendum. These are operative at the federal as well as local levels. According to some observers, the instruments of direct democracy were what allowed the consociational system to emerge, because all laws voted in Parliament can be submitted to a referendum and therefore need the support of large alliances within the political elite (Neidhart 1970).

These two main characteristics of the political system provoke major politicisation of the migrant issue and the exclusion of immigrants from political participation (Mahnig & Wimmer 2003). Because of the long negotiations and decision-making process in a consociational democracy, this system involved extended periods of indecision with regard to immigration issues. Since interests in the political field of migration are so divergent, it is difficult for the parties to come to an agreement easily. Second, the instruments of direct democracy have forced the political elite to negotiate the concept of 'over-foreignisation' with populist challengers. Immigration policies that had permitted the various actors to agree to accommodate the economic needs of the country became one of the most contested and controversial issues since the 1960s, when radical right-wing populist parties started to gain public support claiming that Switzerland was becoming 'over-foreignised' by ever-increasing immigrants. Using the tools of direct democracy, these xenophobic movements succeeded in vetoing liberal government reforms and put their parties under pressure through the launching of eight popular initiatives and several referenda to curb the presence of foreigners. Although none of these initiatives passed, they have consistently influenced the migration policy agenda and public opinion on immigration issues urging the Swiss government to adopt more restrictive admission policies (Niederberger 2004).

Recently challenging the federal government is one political entrepreneur whose anti-immigrant agenda is built upon a political campaign focused on the costs of immigration, control, security and restriction. The SVP, formerly a moderate peasants' party that transformed in the early 1990s into a radical right-wing populist political organisation, won the biggest share of parliamentary votes in the 2003 general elections. This upset the traditional consociational system that, since 1959, evenly distributed power among what were then the four leading political parties and in which the SVP before had only access to one seat. Following the elections in December 2003, as leader of the SVP, Blocher gained for the first time a second seat in the government and became Minister of Justice and Police, which also put him in charge of migration and asylum. Thus far, the government approved several of the Minister's proposals to deal with illegal migration, undocumented workers, asylum law abuses and unsatisfactory international cooperation concerning the readmission of rejected asylum seekers.

In the 2007 electoral campaign, immigrants were once again blamed for social disorder, crime, youth violence and welfare abuses. World-wide attention fell on the SVP posters accompanying the launch of their initiative to deport criminal immigrants; they depicted a white sheep throwing a black one out of country. *The New York Times* reported how the campaign's 'subliminal message is that the influx of foreigners has somehow

polluted Swiss society, straining the social welfare system and threatening the very identity of the country' (*The New York Times* 8 October 2007).

The end of the parliamentary election campaign was – unusual for Switzerland – heavily focused on Blocher as a public figure. Usually, members of the Federal Council tend to moderate themselves when it comes to election. But Blocher was different: he wanted his position in the Federal Council to be strengthened through a greater representation of the SVP in Parliament. The strategy worked and the seasoned party's campaign focused on their charismatic leader's success in the election on 21 October. The SVP won nearly 30 per cent of the votes, thus displacing the SPS and the FDP to the second row.

A strengthened presence in the Federal Council since 2003 has put the SVP in a win-win situation. The party can set the agenda for parliamentary debate and, if they fail, launch a veto against any reform they oppose through a referendum. The tools of direct democracy enable the party to highlight issues in ways that Parliament cannot constrain. But even if wearing both hats – i.e. the government and the opposition – was rewarded by a large minority of the electorate, MPs increasingly came to oppose Blocher's dysfunctional role. Blocher refused to play the game of consensus within a consociational government. His failure to integrate into the federal government compelled Parliament to remove him and vote in moderate SVP representative Evelyn Widmer-Schlumpf as a new member of the Federal Council in December 2007. This was a clear demonstration of disapproval of Blocher and his party's populist, anti-parliamentarian strategy and style.

The opportunities direct democracy offers for intervention within the political system make it quite likely that the SVP will enforce its oppositional role in the future by exploiting migration policy as a major issue, seeing as controversial questions can never be constrained to Parliament alone. Other European countries may be able to adopt policies 'behind closed doors' to extend political and social rights to migrants, but this is nearly impossible in Switzerland (Guiraudon 2000). However, such a right-wing strategy, no matter how determined its proponents, may not always find popular support. An important point of reference is the SVP's defeat in the 1 June 2008 vote. This vote on 'democratic naturalisations' focused on the SVP's intention to, through popular initiative, abolish the rule of law in acquiring Swiss citizenship, thus reinforcing the power of the municipalities to take even arbitrary decisions. Ultimate failure here proved that even a strong, resolute party cannot always gain support, especially if their arguments threaten the sense of fair and equal access to rights.

5 Concluding remarks

For a long time, from World War II until the late 1990s, the labour market's economic demands influenced Switzerland's admission policy without taking the quest for integration into account. Admission policies were focused on a rotation model that fuelled the economy with labour without necessarily introducing any integration provisions for migrants who came to stay; after all, immigrants were not conceived as a potential part of the population. This utilitarian policy seemed to fit best with proclaimed needs that the country be free of foreign cultural influences, as was recorded, for example, in the Alien's Law of 1931 – a law that reflected the xenophobia of the 1920s. Since the 1970s, migrants' length of stay in Switzerland and their own changing attitudes and expectations, along with the evolving needs of the economy and the school system, have made shifting towards a more inclusive migration policy inevitable. But the alliance between the government and the regional economic and supranational human rights interests who laboured to include a foreign workforce through legislative reforms were continuously forced to deal with a xenophobic radical movement. While politically isolated, this movement could use opportunity structures to leverage government decision-making through a referendum. This policy was generally favoured by a minimal welfare state, particularly one addressing immigrants who, up until the 1970s, had been excluded from solidarity networks and were thus exposed to social risks upon return 'home'.

The paradigm shift occurred in the 1980s after the oil crisis, where it became clear that the migrants who did not return to their country of origin would stay in Switzerland. The introduction of unemployment insurance and the inauguration of a larger welfare system also protected labour migrants and introduced them to social citizenship. But the 1980s were also when asylum emerged as a metaphor for unwanted migration. The government reacted to the new challenge with a two-tiered approach. First came new severity on the asylum issue and enforcement of a policy that deterred illegitimate immigration. Following that was the introduction of legislative-level reforms that favoured integration for desired labour migration. This debate seems to have ended with the new Alien's and Asylum Law that passed 2006 popular approval and came into force in 2008.

Federalism, municipal autonomy, consociationalism and direct democracy offer a framework in which many actors and stakeholders attempt to influence the decision-making process. This form of multi-level governance has long prevented Switzerland from matching its policy to inclusive European standards of social rights (and to the new economic needs Switzerland has had to compete with). Still, in recent years it nevertheless permitted its guiding principles to converge with those of its important European partners. Since the signing of the Bilateral Agreement, obvious

points of convergence between Switzerland and the EU on issues concerning immigration and migration policies will no doubt multiply in the future. But the spectre of 'over-foreignisation' will probably prevent Switzerland – at least at the federal level – to join a liberal citizenship policy shared by its European partners. Switzerland's cultural inhibitions are too strong to open its institutions of – at least symbolically – highly valued citizenship to allegedly undeserving immigrants. But who's to say that, in the evolution of political processes, late runners can't one day become European forerunners, especially in a field as volatile as migration and citizenship issues?

Notes

- 1 Migration and integration policies are matters of cantonal sovereignty to a certain degree.
- 2 According to the rotation scheme, migrants entered the country for a period of one to two years and were then supposed to return home to make room for other guest workers.
- 3 'Boat people' refers to the mass departure of Vietnamese and Cambodians in the 1970s who were escaping newly installed communist regimes and seeking refuge in Western countries.
- 4 *Neue Zürcher Zeitung (NZZ)* is a high-quality newspaper based in Zurich.
- 5 The most supreme in Switzerland is the Federal Court.

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6 The case of the United Kingdom

Lucie Cerna and Almuth Wietholtz

1 Immigration to the United Kingdom since World War II¹

Immigration and integration policymaking in the United Kingdom have undergone a number of significant changes and paradigm shifts over the past decades. Naturally, policies have been affected by broader economic and social developments, such as the impact of globalisation on industries as well as labour demand for particular skills, and economic cycles, e.g. accelerating economic growth and increasing employment rates, followed by a decline with 2008's economic crisis. In addition, party politics and external events have impacted policies, such as changes in government from Conservative in the 1970s and the 1980s to Labour in the 1990s, the terrorist attacks of 9/11 in the United States and the 7 July 2005 bombings in London.

What distinguishes the history of British immigration politics from other cases is first and foremost the long-lasting attempt to regulate and reduce the immigration not of 'aliens' or 'foreigners', but of people from the Empire, whose population of about 800 million had for all intents and purposes been made British nationals. Yet, both the composition and the origin of migration to the UK have visibly changed over the past few decades. The 1948 Nationality Act was the last moment at which a liberal settlement was open to the Empire. The act, which created a legal status – Citizenship of the UK and Colonies – included Britons and colonial British subjects under a single definition of British citizenship and established their right to enter the UK (Hansen 1999: 65). The act thus also tried to assert Britain's role as leader of the Commonwealth (Somerville, Sriskandarajah & Latorre 2009).

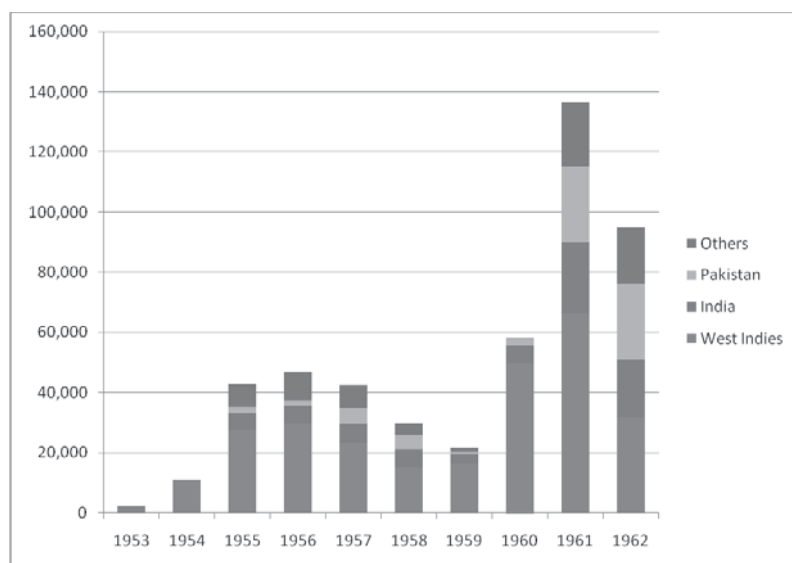
A liberal immigration policy allowed unrestricted access from the colonies and the Commonwealth until 1962. At the time, the immigration of non-British subjects was already controlled, even though the government recruited 'aliens' to fill labour shortages through schemes such as the European Volunteer Workers (EVW) Programme. Since the UK was losing large numbers of its own citizens to North America, Australia and other Commonwealth countries, the government also encouraged different types of immigration. This situation paved the way for immigration first from

Ireland in the 1940s and 1950s and, later, the English-speaking Caribbean and the Indian subcontinent (Layton-Henry 2004).

As Figure 6.1 below shows, 1961 saw a particularly massive increase in immigration numbers. A political campaign against non-white immigration consequently emerged first within the public, then among opposition members in Parliament and finally in the Ministry of Labour (Hansen 2001). The campaign was ultimately able to stop the open policy in 1962 with the first Commonwealth Immigrants Act, which had been introduced by Conservative Home Secretary Richard Butler (Joppke 1999). The act ruled that Commonwealth immigrants could enter the UK only via a voucher scheme unless they were born in the UK, held a British passport or were included on such a passport. Due to continued New Commonwealth immigration, further restrictions were introduced by the Labour government in 1965, which took the form of an annual quota of 8,500 New Commonwealth workers and abolished the scheme's Category C² (Layton-Henry 2004).

The 1962 Commonwealth Immigrants Act disjoined the basic association between nationality and the rights of citizenship so that until 1981, a British passport no longer guaranteed its holder British citizenship rights (Hansen 2001). Even though the goal of the act has been to limit Commonwealth immigration, it did not stop family and student

Figure 6.1 *Estimated net immigration to the UK from the New Commonwealth*



Source: Layton-Henry (1992: 13)

Note: Figure for 1962 reflects first six months up to introduction of first controls.

immigration, and the restrictive terms of employment vouchers were not strictly followed in actuality (Spencer 1997). Succeeding governments therefore continued to cut immigration links with the New Commonwealth as far as possible.

The Conservatives' election promise to stop large-scale immigration into the UK was consolidated into the 1971 Immigration Act. This act marked a turning point in British history insofar as citizens of independent Commonwealth countries and British subjects without any close connection to the UK were now treated as aliens. Immigration policy turned to categories of birth and ancestry to define which people belonged to Britain and which did not (Joppke 1999). The act employed the notion of *patriality*³ to determine who had the 'right of abode', for which it was strongly criticized on the grounds of racism (Hansen 2000). Yet Home Secretary at the time Reginald Maudling defended this clause, claiming that patriality recognised the 'family connection' with the British diaspora abroad, rather than being a racial concept (Joppke 1999: 111). Furthermore, a strict work permit system replaced the employment vouchers, the state received greater powers of deportation and the process from temporary to permanent immigration was made more difficult (Joppke 1999).

When Margaret Thatcher was elected Leader of the Opposition in September 1975, the Conservative Party went on to adopt even more restrictive policies that would limit New Commonwealth immigration. During the 1978 election campaign, Thatcher famously expressed her concern that the UK was being 'rather swamped by people with a different culture' (cited in Layton-Henry 1992: 184).

While the government had already proposed several restrictions on family migration in the 1977 White Paper, it was the 1981 British Nationality Act that finally 'marked a crucial break with Britain's imperial past' (Layton-Henry 2004: 306). The 1971 act had already deprived Commonwealth immigrants of certain rights and equated them with aliens, but the 1981 act divided 'citizenship of the UK and Colonies' into three separate categories: British Citizenship, British Dependent Territory Citizenship (BDTC) and British Overseas Citizenship (BOC).⁴ As a result, the act abolished *jus soli* and only granted the 'right of abode', while other rights were granted by the common law (Joppke 1999). The act's goal was thus to close the division between immigration and citizenship law and to approximate UK legislation to that of other countries (Hansen 2001).

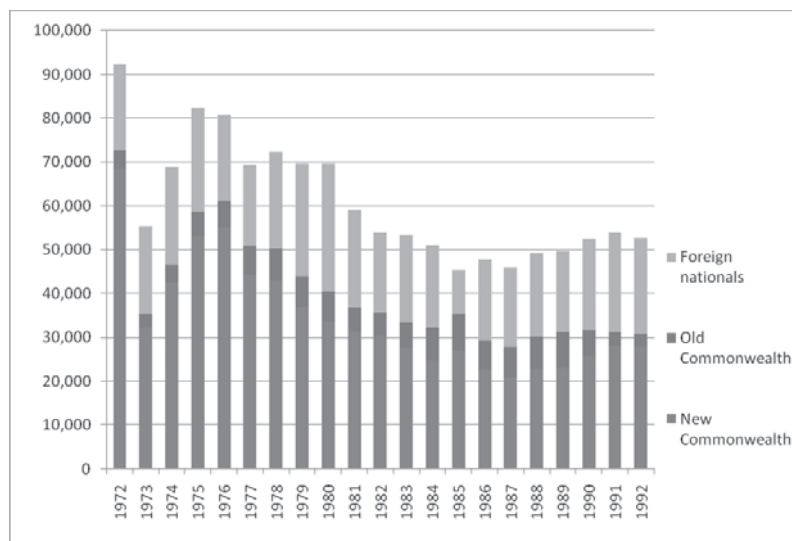
Despite all legislative restrictions, immigration flows started to expand rapidly in the late 1980s, a trend that even increased in the late 1990s. Inflows of New Commonwealth citizens remained stable until the late 1980s, and then again continued to rise until 1999. Old Commonwealth migration was fairly steady until the late 1990s, when it began to rise significantly. Immigration of citizens from other countries increased particularly in 1998-1999. Finally, freedom of movement within the European

Community and, later, the European Union contributed to a higher inflow of EU citizens. Overall, citizens from Ireland, India and the US have constituted the three major groups of all immigrants to the UK (Ford 1994). In fact, Irish nationals have been the most significant group for over 100 years.

Figure 6.2 shows how the origin of migrants entering the UK changed over the course of two decades.

Another central change in the composition and origin of migration flows has occurred since the first round of EU enlargements in 2004. Many recent immigrants have come from the new EU countries in Central and Eastern Europe. Since May 2004, around 1.3 million workers from A-8⁵ countries have come to the UK (Sumption & Somerville 2010: 9). This dramatic increase has been made possible by the non-restriction of the British labour market – indeed, the UK was the only country besides Ireland and Sweden that opened its labour market to workers from the new EU countries. However, estimates calculate that more than half of A-8 migrants have returned home as only about 700,000 were left in the third quarter of 2009. Polish nationals make up around two thirds of A-8 immigration (ibid.: 13).

Figure 6.2 *Settlement by origin*



Source: Hansen (2000: 267)

1.1 *The evolution of migration policies*

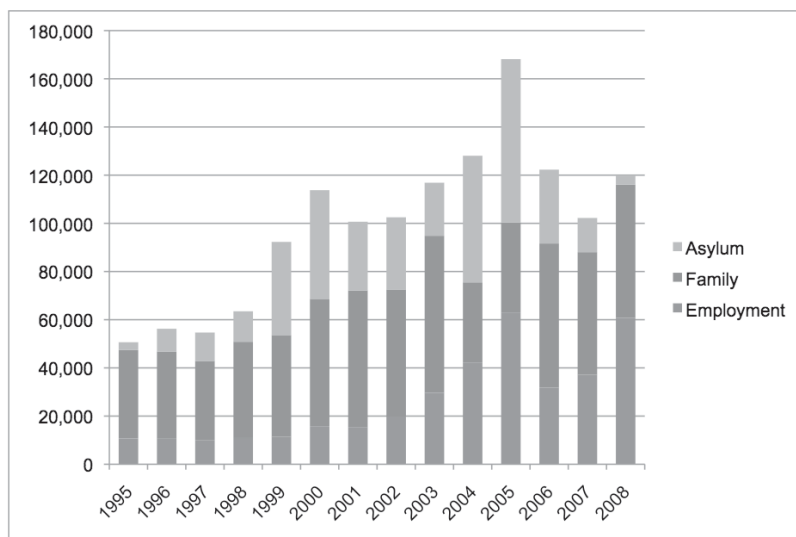
While the Immigration Acts of the 1970s and 1980s were predominantly concerned with citizenship and Commonwealth immigration, the 1990s were largely characterised by concerns of asylum seekers coming to the UK. The 1993 Asylum and Immigration Appeals Act deserves particular attention as it was the first separate asylum law in British migration history.⁶ After family migration was drastically reduced in the mid-1980s, asylum became a new way for potential immigrants to enter the UK. In anticipation of a European Court of Human Rights indictment, the act granted in-country right of appeal to all asylum seekers, emphasising the UK's conflation of asylum and immigration policy. Yet at the same time, the act also countered this liberalisation with two restrictive measures: removal of the right to appeal for refused short-term visitors and students and introduction of a 'fast-track' procedure for 'bogus' asylum applications (Joppke 1999). The act thus demonstrates a trademark of British migration policy, namely that the liberalisation of some measures is often countered with restrictiveness towards other aspects in one and the same act.

We have seen that immigration flows began to expand rapidly in the late 1980s and that this trend continued until the late 1990s (Layton-Henry 2004). However, between 1997 and 2008 a change in the government's preferences over types of immigration has become visible (see Figure 6.3). That time period has once again witnessed an increase in labour migration (of highly skilled migrants, in particular), as well as (mostly temporary) student immigration (52 per cent of the total). In fact, between 1995 and 1999, the country gained some 100,000 highly educated and managerial migrants as opposed to around 50,000 manual and clerical workers. In general, workers from abroad tend to work in financial services, the IT sector, manufacturing, transport and communications, hotels and catering, health care and education (ibid.).

1.2 *Immigration policymaking since the 1990s*

Over the last decades, the UK has undergone a profound shift from a 'zero immigration country' to one that adheres to the paradigm of 'managed migration' (Layton-Henry 1994, 2004).⁷ Since the 1990s, British immigration policy has been characterised as restrictive towards asylum seekers and illegal migrants but welcoming towards skilled and highly skilled migrants. To this end, UK governments have passed several major pieces of legislation on immigration and asylum, namely, in 1993, 1996, 1999, 2002, 2004, 2006, 2008 and 2009.⁸ All have aimed to manage the increasingly large and complex inflows of people. As Spencer (2002: 10) writes:

Figure 6.3 *Grants of settlement by category (excluding EEA nationals and Switzerland)*



Sources: Home Office, Control of Immigration Statistics (1997, 2001, 2003, 2006b, 2009b)
 Note: EEA includes EU countries, Norway, Iceland and Liechtenstein.

recognition that migration will be a central feature of the global economy and that it brings economic benefits has led to a shift in the Government's approach from that of immigration control to management in the UK's interests.

The 1998 White Paper 'Fairer, Faster and Firmer: A Modern Approach to Immigration and Asylum' set the tone by stating that the UK would take a 'firm but fair' approach to immigration and asylum. These principles were reaffirmed by the 2002 White Paper 'Secure Borders, Safe Haven: Diversity in Modern Britain', which preceded the 2002 Nationality, Immigration and Asylum Act. In the 2002 paper, Home Secretary David Blunkett set out a new paradigm of 'managed migration', which has been called 'a radical concept' because it accepts 'the progressive character of migration in the context of a global economy' (Flynn 2003: 9). It meant that the UK would open up labour migration that was beneficial for the economy, comprising both highly skilled and low-skilled immigrants. Increasing the channels particularly for highly skilled immigrants and keeping the number of other immigrants and asylum seekers down have become priorities. In 2000, Immigration Minister Barbara Roche confirmed research findings that many sectors of the economy (IT, health,

engineering, education and financial services) would have to depend on skilled labour if they wished to retain their competitiveness (Flynn 2003). Yet, channels for low-skilled migration were also deemed important for reducing illegal migration.

Due to pressures from sectoral labour market shortages in both low- and high-skilled sectors, the New Labour government has somewhat relaxed labour immigration restrictions over the past years. At the same time, the UK has been competing both within the EU and worldwide for skilled professionals. On the other hand, public pressure and tabloid press hostility have also compelled stricter controls on illegal immigrants and asylum seekers. Under the 'security' label, the government has dealt with everyone from terrorists, asylum seekers and illegal immigrants to criminals, and has called for stricter border controls. In fact, through the Terrorism Act 2000, British government had inserted 'war on terror' measures into immigration policies even prior to 9/11. Additional legislation followed with the Antiterrorism, Crime and Security Act 2001, which linked immigration to a discourse on security and terrorism (Flynn 2003).

For several decades prior to this, only a few people had identified race and immigration as important issues in MORI⁹ (2005a, 2005b) polls, though these numbers increased dramatically in 1999-2000, indicating a stark shift in public opinion. By 2001, immigration had become one of the most important political issues in the UK, frequently covered in the media and in Parliament. By 2005, immigration and asylum had become salient campaign issues in the general election. This went so far that the Conservatives declared they would, if elected, withdraw the UK from the Geneva Convention on Refugees (Geddes 2005). In February 2005, 40 per cent of all people polled placed race and immigration ahead of any other public policy issue for the first time; more than 60 per cent of the population felt that too many immigrants lived in the UK (Sriskandarajah & Hopwood Road 2005). Several surveys (YouGov 2005) yielded the finding that the British public seems concerned about high numbers of immigrants and has low confidence in the immigration system. The topic of asylum migration frequently appears in the media, and the escape of asylum seekers from detention centres in December 2006 demonstrated not only the politicisation of migration and asylum but also the harsh measures with which denied applicants are confronted. Yet the causality between immigration and public opinion is not a straightforward one even though the government likes to portray public concern as a consequence of immigration. Critics such as Don Flynn from the Migrant Rights Network instead see the overall concern with immigration and asylum as the population's reaction to a discourse driven by politicians and the media. The government reacted to the population's apparent preferences for the asylum-restrictive/skilled-open policy with the 2005 'Five year strategy'. It clarified three main immigration priorities for Britain: '1) to ensure the UK benefits

from migration which adds to its prosperity, 2) to enforce strict controls to eliminate abuse of the immigration system, and 3) to uphold an immigration system responsive to public concerns' (Ensor & Shah 2005: 1).

The government further introduced the 2009 Borders, Citizenship and Immigration Act, which received Royal Assent on 21 July 2009. In addition, it published a draft Immigration Bill (the so-called Simplification Bill) on 12 November 2009, showing the continuing progress made by simplifying the twelve immigration laws since the 1971 act (UKBA 2009b). It also takes into consideration immigration law and does not include nationality law, in contrast to the 2009 Borders, Citizenship and Immigration Act. The Simplification Bill was not considered in Parliament before the 2010 general election.

Finally, the UK's focus on maintaining border controls is also apparent in the country's opting out of provisions for a common policy on free movement, immigration and asylum in the EU Treaty of Amsterdam (Geddes 2005). The UK participates in common measures on asylum and illegal immigration, but does not take part in those for legal migration. Nevertheless, the EU has exerted some liberalising influence on the UK's immigration by questioning the basis of the country's migration policy – tight border controls and executive decision over the fate of immigrants (Joppke 1999), topics to which we now turn.

1.3 *Governance patterns and actors in policymaking*

Influences on immigration policymaking can be found on the macro-, meso- and micro-levels (Somerville 2007). On the macro-level, we identify three significant structural factors, namely globalisation, international and national law and the European Union – each with varying degrees of influence on British migration policy, depending on the area. For labour migration, globalisation has played a far larger role than for asylum, where international human rights norms prevail. EU impact has increased since 1997 insofar as the union has promoted globalisation and free markets, which has had an effect on labour migration policy. The EU has also played a part in changing asylum policy (*ibid.*).

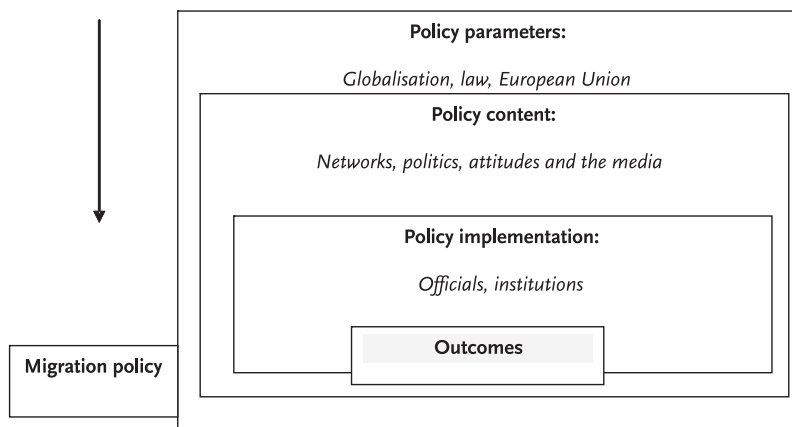
Becoming more and more evident on the meso-level is the significance of networks, interest groups, politics and the personal traits of policy-makers, popular attitudes and the media. According to Somerville (*ibid.*: 153), the proliferation of actors, such as lobby groups, makes networks especially useful in explaining the recent years' changes in the liberalisation of labour migration policy. Among these actors, the Prime Minister and the Home Secretary can be identified as the main agenda-setters and leaders in immigration policymaking. In addition, inter-party conflict has led to restrictive policies in certain areas, mainly for asylum and security. As discussed in the previous section, negative attitudes in the public and

the media play a role in policymaking. Their influence is very complex, though they have a notably more significant impact on asylum policy than on labour migration (ibid.: 154).

On the micro-level, policy implementation by officials and institutions are clearly important, especially at critical junctures. This level influences the movement from policy content to actual policy delivery and implementation (Somerville 2007). Figure 6.4 summarises the three policy levels and contents.

Until the New Labour government introduced a new style of policymaking to the field of immigration, UK immigration policies were reactive rather than proactive. That is, the government usually implemented restrictions as a response to external events. Many acts had been passed in response to large-scale immigration from certain parts of the world or a significant number of asylum applications during a specific time period, thus linking immigrant numbers with immigration control policy (Meyers 2004: 79). These restrictive immigration policies were possible due to the UK's institutional framework. Hansen (2000: 237) states that 'four factors [...] distinguish the Westminster model from Continental Europe: a powerful executive, a weak legislature, a timid judiciary and an absence of a bill of rights'. In general, the executive power remains strong in the UK. The government can implement policy changes (e.g. increased financial allocations for immigration control), and does not need to go through Parliament.

Figure 6.4 *Policy development process*



Source: Somerville (2007: 156)

The legislature was able to achieve only small changes to British migration legislation. In other cases, the executive was able to push through its proposals. As Hansen wrote (*ibid.*: 238): 'free entry ended in 1962, Asians with British passports were excluded in 1968. Commonwealth citizens lost their privileged place in migration law in 1971 and Britons and settled persons lost the right to bring family members to the UK in 1988.'

In addition, immigration rules, which are easier to pass than immigration bills, have constituted many important mechanisms (Hansen 2000). Unlike other countries, the Constitution and courts have played a minimal role in protecting the rights of immigrants to the UK. Nonetheless, since 2000, the European Court of Human Rights has gained considerable influence as the UK now has to adhere to the European Convention on Human Rights. As non-legislated 'rules of practice', immigration regulations do not even bind the Home Secretary and his executive machinery, thus epitomising the reign of absolute state discretion in British immigration policy. Immigration rules have therefore been perfectly flexible and adaptable tools for the 'loophole-closing' and 'fine-tuning' that characterised British immigration policy in its post-statutory phase (Joppke 1999: 115). Nevertheless, Statham and Geddes (2006) point to several cases where courts rejected restrictive immigration legislation that the government had proposed. An example would be the government's 2003 attempt to take away welfare benefits from asylum applicants. However, the Court of Appeal supported the ruling of the High Court that it was 'inhumane and contrary to law' (*ibid.*: 255).

Since New Labour came into power in 1997, British policy process and policy style have changed considerably. More specifically, rather than the Westminster model that Hansen (2000) proposed, Somerville (2007) has convincingly argued for a more plural and fragmented policymaking environment in UK's immigration. He concludes that the importance of institutions for policy development is only limited. While the government can still implement immigration policies with relative autonomy, it now considers other factors such as 'challenges from political party opponents, but also the blocking potential of the judiciary, and to a lesser extent pressures from lobby groups' (Statham & Geddes 2006: 258). One of the main changes that New Labour implemented was the 'emphasis on joined-up government, or better horizontal and vertical co-ordination across services, in all its policies. This also applies to institutions delivering migration policy' (Somerville 2007: 77).

True to New Labour governance style, the Home Office has invited stakeholders to join advisory panels more and more over the last years. These panels have also been engaged through formal consultation on policy developments. However, the consultation system has its limits as the government retains the power in the interest of political expediency. So far, there has been no formal structure for consultation, leaving it an ad hoc process.

Nevertheless, the government is in the process of changing this approach and employing an expert body to provide advice (Home Office 2006d; IND 2007b, 2007d, 2007f; UKBA 2009c). On the other hand, employers' associations, trade unions and NGOs are more directly engaged in the migration discussion through the dissemination of press releases, reports, campaigns and formal mechanisms, e.g. having input on parliamentary committees (Ensor & Shah 2005). The government has also started to engage in close consultations with the Confederation of British Industries (CBI) and the Trade Union Congress (TUC) to optimise migration policy concerning economic needs. Overall, unions and employers have displayed a comparatively open policy position for labour migration.

According to one anonymous interviewee, another part of New Labour's trademark was the shift in governance towards the devolution of regions. As far as immigration is concerned, little change can be seen in this policy area. Local government still has little say in policymaking, and local authorities are frustrated with not being part of the decision-making process. Devolved regions have not gained autonomy as the Home Office provides the terms of policies in a UK-wide immigration system. For instance, Scotland has engaged in pursuit of the authorities call 'fresh talent' as the region desperately seeks highly skilled immigrants. However, Scottish authorities can only go through the UK-wide system to encourage immigrants to come to Scotland. Nevertheless, they have obtained some discretion.

These days, the main actors involved in policymaking are the government and the Home Office. Among politicians, the Prime Minister and the Home Secretary are at the forefront, but others turn out to be important for particular policies. In general, all main political parties agree on labour migration policies, but there is more disagreement and a greater 'race to the bottom',¹⁰ on asylum policy (Somerville 2007: 126). The Prime Minister can overrule the Home Secretary – a pivotal actor otherwise – by putting the latter under pressure mostly on politically controversial issues. For example, former Prime Minister Tony Blair was generally concerned about curbing asylum numbers and displayed more public presence following certain events such as 9/11 and 7/7. The role of civil service has shifted from policy formulation and advice to policy management and service delivery (Dorey 2005). Increasingly, special advisers have come to provide the main ministers with advice on practicable policy options and have been involved in developing immigration policies.

Even though institutions have played a greater role in policy's implementation than its development, the Home Office has been the most important institution for immigration policy (Somerville 2007). In May 2001, it took over the responsibility for labour migration from the Employment Department. It has also been responsible for asylum policy since the Aliens Restriction Acts of 1914 and 1919 (Macdonald & Blake 1991).

More specifically, the Home Office's Immigration and Nationality Directorate (IND) had become the main body for immigration policymaking and was an executive agency. The IND was supported by the Home Office's so-called Aim 6 intended to manage migration in the interests of Britain's security, economic growth and social stability (IND 2007f). It was committed to including in the consultation process stakeholders such as community groups, voluntary sector organisations, local authorities, legal organisations and the police.

In April 2008, however, the IND was replaced by the UK Border Agency (UKBA) – first launched as a shadow agency of the Home Office and then awarded full status in 2009. The agency brings together work previously carried out by the Border and Immigration Agency, customs detection work at the border from Her Majesty's Revenue & Customs and UK Visa Services from the Foreign & Commonwealth Office (UKBA 2009b). It is divided into five unified operations: borders, international, immigration, intelligence, criminality and detention. The agency promises various solutions including a better focus on delivery, meeting the public's expectations in terms of secure borders and illegal immigration, greater accountability, greater operational freedom to respond to challenges, ability to reinvest savings, opportunity to achieve new ways of working and a new identity branding for bringing staff together (*ibid.*). In addition, Aim 6 is to be upheld.

As Somerville (2007) has noted, UK policymaking styles differ according to the type of immigration at stake. Thus, for labour migration, we observe different actors than for asylum policy. In the case of labour migration, five groups of actors in the policy community are relevant. First, individual businesses and employers' associations lobby for an open labour migration policy. Second, the legal profession directs the voices and interests of its major clients, i.e. major businesses. Third, members-only groups and committees, informal and formal, advise or lobby the government. Fourth, think tanks and research organisations provide the government with influential research. Fifth, the government plays the most important role in policymaking. It not only includes the Home Office, but also the Treasury, the Department of Work and Pensions, the Department for Business, Enterprise and Regulatory Reform, the Department for Innovation, Universities and Skills (both previously under the Department for Trade and Industry) and the Bank of England. The Treasury is considered the most powerful player and is closely connected with the Department of Work and Pensions. Other departments also have some interest in particular policies (Ensor & Shah 2005; Somerville 2007).

To give an example, the Home Office has cooperated with the Department for International Development (DfID) in the ongoing debate about brain drain and the question of whether it is the receiving country's responsibility to design policies to limit the outflow of highly skilled

workers (e.g. doctors or nurses) from developing countries. Even though the Home Office is ultimately responsible for immigration policy, the DfID has been the main locus for the brain drain debate, being the office engaged in writing reports on the issue and responding on behalf of the government. The former Ministry of Trade and Industry and the Treasury are concerned particularly about highly skilled immigration (Ensor & Shah 2005). All actors are likely to agree on a labour migration policy since they share the same (pro-market) ideology and consider labour migration beneficial to the UK's economy.

On the other hand, asylum policy has developed in a different manner because actors lack resources and stability and do not share the same ideology (Somerville 2007). Three scattered actors can be pointed out. First, the refugee charity sector is often represented by organisations such as Refugee Council, Refugee Action and Amnesty International. Second is the legal profession (e.g. Refugee Legal Centre, the Immigration Law Practitioner's Association's asylum sub-committee and the Joint Council for the Welfare of Immigrants). Third are children's charities (major ones often being grouped under Refugee Children's Consortia). All three groups are good at campaigning, cooperating and establishing formal networks with the government. Contrary to most groups interested in asylum, these three do have some influence, though they have been under pressure in recent years. Rather than a policy community, asylum policy forms an issue network because no common ideology exists among the groups (Somerville 2007). The government is an especially powerful actor. In contrast to the considerable number of departments involved in labour migration policy, only the Home Office and the Department for Constitutional Affairs have an interest in asylum policy. Nonetheless, the Home Office dominates policymaking due to its budget, size and political influence (ibid.). In the next sections, we will turn to more detailed analysis of different migration policies in the UK.

1.4 *Labour migration*

With the exception of the European Volunteer Workers Programme of 1945, the UK has recruited labour mostly from Commonwealth countries since the end of World War II. However, the UK's recent labour migration policies betray certain shifts in nationality preferences; several legislative acts have restricted immigration from the Commonwealth, while Europe has become the favourite labour source for Britain (Ensor & Shah 2005). Yet ever since the appearance of labour market shortages in the mid-1990s, the UK has also begun to recruit non-EU workers. Nonetheless, after being the single largest group in the UK for over a century, Irish nationals only recently became number two with the arrival of many Polish foreign nationals beginning in 2004.

Shifts in political discourse and policy have mostly been due to favourable economic and political circumstances. They include a booming economy, labour shortages and the CBI's lobbying for increased immigration (Layton-Henry 2004). In addition, as the Labour party was elected both in 1997 and 2001 with a significant majority, the government enjoyed a lee-way as well as public support for implementing new immigration policies. In recent years, the government enacted several new policies and specific programmes as part of its strategy of focusing on beneficial labour migration. While citizens from EU countries do not require a special visa to work in the UK, several schemes exist for other nationals. Temporary albeit renewable work permits are the 'longest-running and most important of these schemes' (Sriskandarajah & Hopwood Road 2005).

Labour shortages in the information technology (IT) sector, especially, have prompted the government to open up immigration at the highly skilled end (Meyers 2004). In 2000, procedures for the admission of foreign professionals in both IT and the health care sector were simplified as then Home Office Immigration Minister Roche called for more flexibility in order to attract 'the best and brightest' to the UK. Along the same lines, in 2001, Home Secretary Blunkett declared that entry for professionals would be eased by way of the Highly Skilled Migrant Programme (HSMP), which came into effect in January 2002. For the first time, certain immigrants could now enter the UK without having secured a job in advance. HSMP immigrants also had the right to apply for permanent residence ('indefinite leave to remain') after five years of residence in the UK.

In 2003, the government introduced the Sectors Based Scheme (SBS) (whose quota amounted to 20,000 in 2003-2004), aimed at facilitating the limited temporary employment of non-EU workers in hospitality's and food processing's low-skilled sectors (Anderson, Ruhs, Rogaly & Spencer 2006). At the same time, Blunkett stated that he could see 'no obvious upper limit' to labour migration, making clear the general preference for a market-driven approach and an aversion to quotas or targets. Finally, the Working Holidaymaker Scheme (WHMS), which has now been in place for more than ten years, allows Commonwealth citizens between the ages of seventeen and 30 to work for one year in the UK and live in the country for two years. According to Somerville (2007: 147), the WHMS 'was aimed at young people, working in low-skill, often seasonal work, and travelling around the UK and Europe on the proceeds'.

Considered an economic migration route, the scheme was liberalised to provide for a flexible labour force between 2003 and 2005. Yet the government restricted the WHMS again in 2005, suspecting abuse of the system (Ensor & Shah 2005). For example, visa-holders were often found to be working for the full 24 months they could live in the country, rather than the twelve working months specified in the terms (Somerville 2007: 147). Mostly officials organised the pushback of the visa. As Somerville (*ibid.*)

describes the process, 'policy objectives were not only frustrated but redrawn in order to accommodate officials' concerns'.¹¹

WHMS restrictions were also the result of the government's perception that an enlarged EU could provide the low-skilled labour force currently needed in Britain. In fact, the immigration of workers from the ten states (comprising 75 million people) that joined the EU in May 2004 has been a key debate over the past years. The media had predicted uncontrolled flows of unskilled or low-skilled workers who would be 'flooding' the UK to claim welfare benefits and exploit social services. The government consequently decided to open up the borders to immigrants from the new member states, with the caveat that they had to register upon arrival and were limited in their ability to claim benefits (Srisikandarajah & Hopwood Road 2005). To this end, a special Workers Registration Scheme (WRS) was set up in February 2004 for people coming from accession countries who started employment after May 2004. The WRS requires workers to register with the Home Office within one month of employment. It is estimated that of the 345,000 EU member state workers who registered for employment between May 2004 and December 2005, up to 30 per cent may have already been in the UK prior to May 2004 (Anderson et al. 2006). A majority of them are working in sectors such as hospitality and catering, administration and construction.

According to Anderson et al. (2006: 8), 'labour immigration – and indeed immigration more generally – is one of the most discussed and contested public policy issues in the UK'. As we have seen, the government has recently introduced a wealth of immigration legislation and regulations leading to a complicated situation. For example, in May 2004, more than 80 different routes of entry existed. To counter the complexity of the system, 2006 saw the introduction of a radical overhaul of immigration policy. A five-year strategy for immigration and asylum included the Labour government's proposal to move on to an Australian-style points system. The plan was also to close the quota system to low-skilled immigrants because the government expected – and in fact preferred – to fill such labour shortages in the course of 2004's EU enlargement. The UK thus established an independent commission, the Migration Advisory Committee (MAC), to determine labour market demands and shortages and what is deemed an optimal number of migrants.

A points system was proposed for five tiers that corresponded to a grading of skills (Home Office 2006e). Each tier would require the immigrant to score a certain number to gain entry clearance or leave to remain (i.e. permanent residence) in the UK. In all tiers, points would be awarded for criteria indicating that the individual would be likely to comply with immigration requirements. In Tiers 1 and 2, applicants receive points for criteria such as age, previous salary or prospective salary and qualifications (a system similar to the existing HSMP). Tier 2 incorporates the main body of

the work permit system, with advice on shortage occupations given by the MAC. All immigrants applying under Tiers 2-5 need to have sponsorship from a licensed sponsor (e.g. an employer). The certificate of sponsorship ensures that the immigrant is able to perform the particular job. Highly skilled Tier 1 immigrants do not require a job offer and thus no sponsorship. Dependants are allowed to come to the UK with the main applicant and work in the country (*ibid.*). Tier 4 includes students, whereas Tier 5 applies to, for example, working holidaymaker schemes. The scheme seeks to simplify policies on the regulation of skilled and highly skilled non-EEA workers and to limit low-skilled immigration from non-EU countries (Tier 3 remains closed). As a consequence, the government reviewed the SBS in 2005 and closed the scheme for the hospitality sector, both out of a concern for misuse in this sector and anticipating these labour market shortages would be filled by new EU member workers (Ruhs 2006). Since 2008, the Seasonal Agricultural Workers Scheme (SAWS) has only applied to Bulgarian and Romanian workers. The remaining low-skilled immigration is 'quota-based, operator-led and time-limited' (Anderson et al. 2006: 9).

1.5 *Family migration*

The earlier shift from mostly unskilled to skilled labour migration has also influenced the composition of the UK's family migration. The British Nationality Act 1965 made a provision for women married to British subjects without citizenship to acquire British subject status by registration. But from the early 1970s to the mid-1980s, when family migration became a major concern, regulations for spouses and fiancés underwent five changes (Joppke 1999). Family migration includes spouses and dependent children under the age of eighteen. The traditional way of entry is through marriage and only a few countries (the UK among them) allow cohabiting couples to enter (Kofman 2004).

Family migration policy is made under executive closure and has been shaped with the aim of reducing 'bogus' immigration. There is no legal protection for family rights, and Parliament has the discretion to grant or withdraw rights from immigrants. The 1988 Immigration Act abolished the previous right of New Commonwealth immigrants to bring their spouses and children to the UK (Joppke 1999). Besides the lack of legal constraints on decisions taken by the government, UK legislation demonstrates only weak moral obligations towards immigrants and their families, making it very restrictive. Yet when Labour came into power in 1997, it revised several immigration control policies implemented by the Conservatives. One of the main changes was elimination of the Primary Purpose rules, under which British nationals marrying non-EU citizens had to prove that their marriage was not a sham (Meyers 2004). In addition, family migration restriction has been further circumvented to a certain degree through EU

legislation (and incorporation of the European Convention on Human Rights into domestic legislation), which loosened the UK's harsh immigration law (Hansen 2000).

In 2005, family reunion was once more restricted on the grounds of concern about sham marriages. Only those entering or living together as fiancés or marriage visitors could marry after notifying a registry office of their intention to wed (Ensor & Shah 2005). The 'Five-year strategy' just about eradicates any immigration routes into the UK via family reunion. The Home Office 'Controlling Borders' publication states that the UK plans to 'end chain migration – with no immediate or automatic right for relatives to bring in more relatives' (2005: 9). The report specifies that only immigrants with five-year residency in the UK or citizenship will be allowed to bring in relatives immediately for settlement. The government is clearly interested in preventing system abuse in the area of family migration, as is the case for asylum migration.

Nevertheless, there have been changes in human rights provisions concerning family migration in recent years. As of February 2005, any non-EU migrant with a short-term visa had to seek permission from the Home Office to get married. However, in April 2006, a High Court judgment found this to be in breach of human rights (Article 12 of the European Convention on Human Rights concerning the right to marry) and discriminatory on grounds of religion (i.e. that those marrying in the Church of England would be regarded more favourably) and nationality. The challenge was brought forward by an undocumented Muslim Algerian migrant and his fiancée, a Polish Roman Catholic migrant, who had entered the UK following EU enlargement and had been refused permission to marry in February 2005 under the UK regulations (Kofman & Meetoo 2008: 161).

In September 2008, the European Court of Justice (ECJ) overturned the UKBA's position on the rights of non-EEA third-country nationals. In the case of *Blaise Baheten Metock and Others v. Minister for Justice, Equality and Law Reform*, which originated in the Republic of Ireland, nine other EEA countries joined in supporting the position taken by the Irish government. It stipulated that EEA law requires third-country national family members to have resided lawfully in another member state with the EU national or to comply with the national immigration rules on family reunification before getting an EEA family permit (i.e. visa for third-country national family members of EU nationals) (Talk Visa 2008).

The ECJ had two main findings to overturn the argument of the governments. First, EEA family permits had to be issued to third-country national family members of EU citizens for the purpose of accompanying or joining the EU citizen to the host state (e.g. the UK) irrespective of whether the family member was, before arriving, lawfully resident (if at all resident) in another member state. Second, the right to family reunification in the host

state does not depend on where or when the family life was established (Talk Visa 2008).

The ECJ judgments affect several UK family reunification provisions. To take spouse applications as an example, the UKBA can no longer require EU nationals to fulfil the immigration rules' support and accommodation requirements to obtain an EEA family permit for the admission of their spouses; the same applies in respect to relatives in the ascending (e.g. parents, grandparents) and descending lines (e.g. children, grandchildren). The UKBA now must decide any pending applications on the basis of the Metock decision (Talk Visa 2008).

Some scholars even classify the UK as the most liberal of the EU member states, in allowing spouses of students, work permit holders and those undertaking training to enter with the right to work. With the increased demand for skilled labour (especially in the IT and welfare sectors, such as education and health) and acceptance of long-term migration for this group, family migration is likely to become more prevalent (Kofman & Meetoo 2008: 156).

1.6 *Asylum seekers and refugees*

According to Joppke (1999: 128), 'a key characteristic of British asylum policy is its rhetorical and structural conflation with immigration policy'. Due to the lack of legislative separation, the tight border control objective for immigration was also applied to asylum. Indeed, until the passing of the Asylum and Immigration Appeals Act in 1993, the UK had no separate asylum law. Instead, up until then, the 1971 Immigration Act and non-statutory Immigration Rules had dealt with asylum (Macdonald & Blake 1991). Since 1985, the UK's policy has focused on limiting immigration of asylum seekers and illegal immigrants – these groups creating the most controversial immigration issue (Layton-Henry 2004; Meyers 2004).

Joppke (1999: 129) aptly summarises asylum policy as follows: 'One is struck by its inclination to make maximal fuss over minimal numbers'. Higher numbers of asylum applications were countered by tough responses such as visa requirements on certain countries of origin, the imposition of carriers' liability on airlines and boats for improperly documented migrants. This was meant to reassure the public that the government had everything under control and that the UK did not have a 'soft touch' on refugees (Layton-Henry 2004). Once inside the country, asylum seekers are often confronted with the reality of detention centres, fast-track procedures, white lists of countries and fingerprinting.

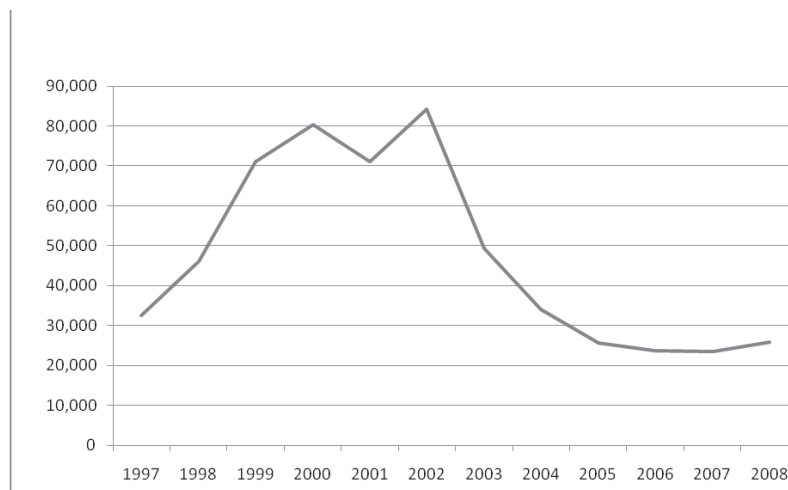
In fact, a tenfold increase in asylum applicants from the developing world since 1988 led to the Asylum and Immigration Appeals Act of 1993, the 1996 Asylum and Immigration Act, the 1999 Immigration and Asylum Act and further restrictive regulations (Meyers 2004: 79). More

specifically, the 1993 act introduced two features: the right to appeal for refused asylum seekers and a fast-track procedure for ‘manifestly unfounded’ asylum claims (Joppke 1999: 133). As could be expected, the rate of refused asylum applications in the UK increased therewith from 16 per cent in 1993 to 75 per cent in 1994. Furthermore, the number of detained persons doubled from 300 in 1993 to over 600 in 1994 (ibid.). However, the number of applications rose again between 1994 and 1995 and produced ‘a backlog of applications awaiting decision and allegations that many of the applications are bogus’ (Meyers 2004: 75).

Further restrictions were introduced with the 1996 Asylum and Immigration Act that denied welfare benefits to asylum seekers who had not applied for asylum in the UK upon arrival (Meyers 2004). It also limited council housing for asylum seekers, and some immigrant categories were prevented from working for six months. With the government’s shift from Conservative to Labour, restrictions were eased, such as not enforcing the 1997 employer sanction laws. Furthermore, the government increased funding available for local councils to take care of asylum seekers who had no means of support.

A new Immigration and Asylum Act was passed in 1999 to further streamline the asylum system and to reduce costs and abuse. The act established the National Asylum Support Service (NASS), which offers two different types of support: a cash-only weekly allowance if the individual stays with friends or relatives or a support package that includes furnished accommodations and an allowance (Sriskandarajah & Hopwood Road 2005). Genuine refugees continue to be welcomed into the UK thanks to the country’s international obligations, but refugees are only better treated once their asylum application has been accepted, rather than when they arrive on UK soil (Ensor & Shah 2005). The current Labour government continues to use a harsh rhetoric and to implement drastic policies on asylum (Hampshire 2005).

Tabloid newspapers such as *The Sun* and *The Daily Mail* have exploited the supposedly high numbers of asylum applications from the late 1990s. They reinforced ‘the view that Britain is a besieged society and that unless the government takes “tough” measures it will be inundated with malingerers, criminals and carriers of disease’ (Hampshire 2005: 184). As a measure of its success in asylum control, the government has thus pointed to, as Figure 6.5 shows, the recent years’ drop in applications. In the figure, we see a major increase in the early 2000s, with a peak in 2002. Not counting dependents, the UK received ‘15.2 percent of the worldwide total of 555,310 asylum applications in 2002, more than any other country, according to the United Nations High Commissioner for Refugees’ (Somerville et al. 2009).

Figure 6.5 *Number of asylum applications received*

Sources: Home Office Control of Immigration Statistics (2001, 2003, 2006b, 2009b)

Asylum applications clearly fell beginning in 2002. Due to a mounting public pressure to limit the number of asylum seekers, the government implemented the Nationality, Immigration and Asylum Act in 2002. This was meant to reduce the high application numbers and extended the use of the 'safe country' list. Applicants from these countries could have their applications certified as 'clearly unfounded' and would therefore have no in-country right of appeal. The act also reintroduced a distinction between applicants at port versus in-country. NASS support, in terms of both subsistence and accommodation, could be refused for individuals who do not apply 'as soon as reasonably practicable'. The 2002 act restricted asylum applicants from working or undertaking vocational training until they received a positive reply (Sriskandarajah & Hopwood Road 2005). The Asylum and Immigration (Treatment of Claimants, etc.) Act of 2004 strengthened the government's power to process applications, as well as to detain and remove asylum seekers. The legislative changes are a sign of the Home Office's focus on improving both the speed of processing and the quality of decision-making (ibid.). Further, the 2006 Immigration, Asylum and Nationality Act required asylum to be refused to anyone who had carried out – or had encouraged others to commit, prepare or instigate – terrorism. It also allowed the Home Secretary to exclude any person from protection under the convention relating to refugees if believed to be a terrorist or major criminal.

Besides the aforementioned acts, the government implemented other policy measures, such as:

tougher visa regimes; financial penalties on air and truck carriers; juxtaposed controls at various European ports (e.g., when British border guards are physically stationed in Calais, with immigration powers, and vice versa); and British immigration liaison officers posted abroad. (Somerville et al. 2009)

Additional policy moves aimed to reduce access of asylum seekers to benefits and the labour market, increasing surveillance and detention and forcing relocation outside London (i.e. dispersal). There has also been a significant increase in detained asylum seekers – with an average of 1,453 detentions per year. While the number of asylum seekers has been reduced, this has come at a high social cost. Different groups and some NGOs are particularly concerned with the treatment of asylum seekers (ibid.).

1.7 *Student migration*

As already mentioned, British migration policy over the past few years has also emphasised student migration. Students were among the first encouraged to come to the UK, a shift in policy that was mostly driven by economic needs. In June 1999, the Prime Minister initiated a three-year strategy called the Initiative for International Education (PMI1). It was intended to attract more students to the UK so as to increase the higher education market share from 17 to 25 per cent and to double the number of new students. This measure was eventually supposed to boost the UK's export earnings by £700 million.

In addition to a £5 million marketing campaign, immigration rules were relaxed to give

automatic permission for students to work part-time and to make it easier for would-be students to obtain a visa. (Spencer 2002: 8)

A result of the government's strategy, the number of students increased from 272,000 in 1999 to 312,000 in 2000 (by 15 per cent), as Table 6.1 indicates. Numbers continued to rise until 2003, then decreased, then peaked again in 2007. Since 2007, they have been declining.

Table 6.1 *Student migration (in thousands)*

1997	1998	1999	2000	2001	2002	2003	2004	2005	2006	2007	2008
278	266	272	312	339	369	319	294	284	309	358	227

Sources: Home Office Control of Immigration Statistics (2003, 2006b, 2009b)

Launched in April 2006, the second Prime Minister's Initiative for International Education (PMI2) was a five-year strategy to strengthen international education. The government noted that around 319,000 students from EU/EEA countries had come to the UK in 2003, adding £5 billion per year to the economy. According to the strategy, 'they [the students] are a factor in the economic sustainability of many of our educational institutions, and enable bright young people from abroad to develop lifelong ties with the UK which are of long-term benefit to the country' (Home Office 2005a: 15). The rules had already been relaxed in 2001 to allow post-graduate students to obtain a work permit after finishing their studies, in hopes that this step would encourage students to keep ties with the UK and contribute to the British economy. However, with the introduction of the points-based system, students fall under the Tier 4 category. They are subject to tight approval processes and strict controls installed to reduce abuse of the system, namely needing to be sponsored by a university and having sufficient funding for their studies.

In 2010, the British government yet again announced tougher student visa regulations to stop abuse of the system. Under the new rules, applicants must speak English near General Certificate of Secondary Education (GCSE) level and those following short-term courses cannot bring dependents (BBC 2010). This change is the government's response to criticism that it had allowed suspected terrorists and other would-be immigrants into the UK who would stay on despite their temporary visas (*ibid.*). While the UK is a very popular location for academic migrants, the country has come to fear foreign-student-turned-terrorists after Christmas 2009's attempted airplane bombing by University College London graduate Umar Farouk Abdulmutallab.

1.8 Recent developments in immigration policymaking

The UK has recently undergone a number of policy changes. The prior mentioned tier system has been implemented since January 2008, starting with Tier 1. Tiers 2, 4 and 5 have followed. However, the country still limits low-skilled immigration to EU workers; Tier 3 remains suspended. The points-based system does not apply to the intra-EU migration that remains a large part of immigration overall. Immigrants have come to the UK in large numbers due to the country's economic growth, its high demands for labour and favourable exchange rates along with restrictions faced in other parts of Europe and high unemployment at home (Somerville et al. 2009). Between May 2004 and May 2009, some 1.3 million persons from A-8 countries arrived in the UK. By the end of 2008, Polish nationals had become the UK's largest group of foreign nationals (*ibid.*). In 2008, only 12 per cent of these immigrants worked in high-skilled occupations. Estimates suggest that half of the new EU workers had left by May 2009 (*ibid.*).

The economic crisis first befalling the UK in 2008 has played a major role. In autumn of that year, Prime Minister Gordon Brown proclaimed 'British workers for British jobs'. Borders and Immigration Minister Phil Woolas stated: 'Migration only works if it benefits the British people, and we are determined to make sure that is what happens' (UC Davis 2009). The government wanted to reassure the public that protection of native workers was its priority and immigration was to be beneficial for the society. Since British unemployment reached two million in 2009, the government tightened regulations on employers wanting to hire non-EU migrant workers. Unions complained that many employers' checks for local workers before hiring non-EU foreigners were inadequate. Beginning in January 2009, employers were obligated to post job openings via the government's Jobcenter Plus (i.e. Labour Employment Agency) before advertising vacancies in non-EU countries. In 2008, an estimated 80,000 British jobs were advertised abroad, albeit ineffectively in the UK. Some 140,000 work permits were issued to non-EU foreigners in 2007, and 151,000 in the first eleven months of 2008. In an effort to raise an annual £15 million to help local communities cover migrant-associated costs, in March 2009, the government introduced a £50 fee on non-EU migrant workers and students (*ibid.*).

Further changes, it was believed, would significantly decrease the number of highly skilled immigrants. As a letter from the Home Office stated: 'During these economic times when people are losing jobs it is crucial that British workers and people already here have the first crack of the whip at getting back in to work' (cited in Contractor 2009). Former Home Secretary Jacqui Smith announced plans that would forbid non-EU migrants to 'take a skilled job in the UK unless it has been advertised to British workers first' (BBC 2009). This was the government's response to the current economic circumstances. Migrants needed to have at least a Master's degree and a prior salary equivalent to at least £20,000 (*ibid.*), and in the end, the government passed a new act that included two further measures (Home Office 2009a). 1) Migrants who were not citizens or permanent residents of the UK could not have access to full services benefits or social housing. 2) Migrants would have to pay a levy towards schools, hospitals and other local services so that that new flows of British immigrants would not tax the community (Plaza 2009).

Even though such policy restrictions on EU workers are outlawed, a considerable number have returned to their home countries and new entries have been limited by the decreased labour demand. While the economic crisis' full effect on economic migration from new EU member states will take time before becoming fully evident, some preliminary trends are present. For one, there has been a significant decrease in applications from the WRS. In the first quarter of 2009, the number of approved applications was at its lowest since EU enlargement in 2004, thus constituting a 53 per

cent decrease from the first quarter of 2008. It appears that immigrants from A-8 countries and immigrants coming under Tier 2 (with a job offer) will be hit the hardest. In fact, the inflow of A-8 nationals might not fully recover (Somerville et al. 2009).

Forecasts for net immigration into the UK have been lowered due to the economic crisis, but analysts still expect a continued high net immigration. The Borders, Citizenship and Immigration Bill 2009 will likely become a law in the current parliamentary session. If so, it will increase the length of time (and costs) associated with becoming a British citizen by introducing a 'provisional citizenship' stage in the process (*ibid.*). Immigration was on the political agenda of the 2010 general election. The Conservative party proposed the establishment of quotas, an overhaul of the whole points-based system and the implementation of new restrictions on immigrants. After many years of a quite liberal immigration policy (especially towards the highly skilled), immigration control is here to stay. Since the Conservatives have come to power, they have already introduced an interim quota on Tier 1 and 2 applicants. The number of most high-skilled migrants will be capped until April 2011 at 5,400 (same as in 2009). The points threshold for Tier 1 has been raised by 5 points to 80. Nevertheless, investors, entrepreneurs and students staying on after graduation from a British university are exempt from this limit. The temporary cap for Tier 2 will be 18,700 (5 per cent lower than 2009 numbers) (Travis 2010). Even though these caps are currently tried out on temporary basis, they are expected to remain permanently.

2 Immigrant and ethnic minority policymaking

Having sketched out developments in immigration trends and influences on immigration policymaking, we now turn to policymaking that concerns immigrants, asylum seekers, refugees and ethnic minorities in Britain. As described earlier, the immediate post-war period in Britain was characterised by an unusually liberal arrangement that endowed all newcomers from the Commonwealth with the same citizenship rights and welfare entitlements that British nationals enjoyed. This policy was narrowed down in 1971 by the Immigration Act and terminated by the passing of the 1981 British Nationality Act. It was this initially very straightforward naturalisation practice that laid the foundation for the idiosyncratically British separation of 'immigrants', 'refugees' and 'ethnic minorities' in terms of political discourse, institutional responsibilities and policy measures. This distinction is still adhered to today. Along the same lines, clear distinctions are made within diversity-accommodating policies concerning work in race relations (as part of equality and human rights issues), social cohesion, citizenship and refugee integration. Building on the historical developments

underlying these trends, the following passages will illuminate current practices and paradigms through the lens of policymaking and institutional responsibilities.

2.1 *The evolution of diversity-accommodating policies under the race relations paradigm*

Regardless of the extent to which immigrants were endowed with formal citizenship rights, by the late 1950s, it was clear that the early assimilationist demands initially imposed were largely ineffective as far as integration into British society. Similar to the situation in many other Western countries, labour market segmentation, residential segregation and lower educational performance of ethnic minority pupils as an aggregate persisted in the UK (see Daniel 1968; Smith 1976; Brown 1984; Modood, Berthoud, Lakey, Nazroo, Smith, Virdee & Beishon 1997). Moreover, first occurrences of 'race riots' in 1958 and early right-wing mobilisation (Moore & Rex 1967) contributed to turning both public and elite opinions against further immigration. It also led British governments to successively introduce tougher immigration laws, as described above. Politically, these restrictions were justified as far as a need to manage race relations, integration problems, growing unemployment and changing demographics (Fitzgerald 1993). As the rationale was summed up in a famous statement by Labour Minister Roy Hattersley: 'without integration, limitation is inexcusable, without limitation, integration is impossible' (cited in Rose 1969: 229).

Traditionally more influenced by developments in the US than Continental Europe, British governments soon adapted the American paradigm of 'race relations'. This was a somewhat slanted policy transfer, as it applied to a different societal group in the UK than it did in the US. Nor did it carry the historical connotations of the slave trade. The 'integration' of newcomers was officially defined as being what Home Secretary Roy Jenkins' oft-quoted 1966 speech called not 'a flattening process of uniformity but as cultural diversity coupled with equal opportunity in an atmosphere of mutual tolerance' (cited in Rex 1995: 248). The 1960s thus oversaw the groundwork for what would come to be characteristically British ways of dealing with diversity and 'integration'. First of all, minority ethnic groups were defined – and their educational and labour market performance monitored and evaluated – on the basis of categories of ethnicity or 'race' (rather than religion or country of origin).¹² Accordingly, indicators for employment, educational performance and housing were measured and monitored on this basis. Secondly, an ever-increasing institutionalisation of policies and laws came to prevent racial discrimination (Schierup 2006). Around the same time, a long-lasting consensus evolved in the UK that openly racist remarks and 'playing the race card' in political campaigns

would be unacceptable. This acknowledgment was exemplified by a high-profile incidence in 1968, when British politician Enoch Powell was sacked by conservative Leader of the Opposition Edward Heath's shadow cabinet the day after Powell gave his 'Rivers of blood' speech. In it, Powell had vehemently warned against the introduction of anti-discrimination legislation (a Race Relations Bill proposed by the Labour government) that would criminalise the display of racial prejudice in certain areas of British life, particularly in housing (Schönwälder 2001).

Interestingly, at the same time race relations policies emerged, UK governments went to lengths not only to avoid the stigmatisation and alienation of ethnic minority groups, but also to circumvent any policies that could be seen as favouring some groups over others. As a result, policy measures in Britain have traditionally been characterised by 'racial inexplicitness'. Rarely have programmes been officially labelled as designed to support particular ethnic groups. Hence, for example, the ambitious housing regeneration scheme Urban Programme from the late 1960s. Clearly aimed at ethnic minority neighbourhoods, this was conceived of as an area-based programme rather than a people-specific one. A notable exception to this rule was the so-called Section 11 funding introduced by the Local Government Act of 1966. It provided local educational authorities with additional funds that could, for example, be used to employ additional language teachers for pupils whose mother tongue was not English (Leung & Franson 2001).¹³

2.2 *The Race Relations Acts and anti-discrimination legislation*

The basis for the long-lasting and continuously expanded policy frame of anti-discrimination legislation was laid with the 1965, 1968 and 1976 Race Relations Acts. Constant development of these acts whenever – albeit only when – Labour governments were in power illustrates the characteristically British incremental, evidence-based policymaking in the area of integration and diversity accommodation.¹⁴ By the mid-1960s, a number of politically influential NGOs, such as the Runnymede Trust, had begun to monitor whether equal opportunities existed *de facto*, and were expressing concern about both social inequality and the indirect and direct discrimination against ethnic minorities. Four particular surveys by the left-leaning independent Policy Studies Institute (formerly Political and Economic Planning, a non-governmental think tank funded by corporations) proved to be particularly influential for passing successive Race Relations Acts (Brown 1982; Daniel 1966; Modood et al. 1997; Smith 1974). The findings of these surveys served both to lever public pressure and prompt practical suggestions for countering existing inequalities.

The first Race Relations Act of 1965 had made discrimination on grounds of race, ethnicity, colour or national origin illegal and encouraged

conciliation through a newly established Race Relations Board (Geddes 2003). Only two years later, a report by Political and Economic Planning (PEP) was able to point to persistent racial discrimination (PEP 1967), thus paving the way for the Race Relations Act of 1968. Six years later, findings from the study *Racial Disadvantage in Employment* by David J. Smith (1974) furthered the Race Relations Act of 1976, which was once more intended to remedy the deficiencies of previous legislation. The act, the passing of which was pre-empted by cross-party group visit to the US, introduced the concept of 'indirect discrimination', i.e. the imposition of a requirement that members of one racial group are less likely to be able to satisfy than others. It made racial and gender discrimination in public places, employment and housing illegal, and even permitted a certain degree of affirmative action. The last act also merged previously established race relations commissions into the Commission for Racial Equality (CRE), a non-departmental government body comprising fifteen commissioners appointed by the Home Secretary. Until its merger into the Equality and Human Rights Commission in 2004, the CRE was in charge of carrying out discrimination and equality policy campaigns, and was a vocal central actor in British policymaking ever since (Rex 2003).

Finally in 1999, 'The Macpherson report' was published. The result of a government inquiry set up by Home Secretary Jack Straw, it criticised the faulty police investigation into the murder of black teenager Stephen Lawrence, and publicly declared that the British police force had exhibited institutional racism (Macpherson 1999). The report paved the way for the passing of the Race Relations (Amendment) Act in 2000, which extended the Act of 1976 to the whole of the public sector and schools, obliging them to eliminate unlawful racial discrimination and promote equal opportunities and good race relations. The act gave all public authorities and private bodies that carry out public tasks a new statutory duty to actively produce and publish a racial equality scheme or policy explaining how they would meet the duties under section 71(1) of the Race Relations Act. Very significantly, while previous legislation had been concerned with promoting access and equal opportunity, this watershed act obliged public bodies to be proactive. They were expected to scrutinise their outcomes in terms of ethnic minority employment and representation (Hansen 2007).¹⁵

2.3 *The influence of inquiries and reports on policymaking*

Reports like those cited above, which are often commissioned by the government in reaction to incidents such as race riots or public authority failure, do more than thoroughly inform politicians and the public about the events corresponding commissions were set up to investigate. Frequently, they also set the tone for the official discourses on ethnic and race relations, community relations and social cohesion.

Salient characteristics of the integration policies described above – namely, an acknowledgment of the existence of societal racism and a reluctance to single out ethnic minorities as ‘problem populations’ – were mirrored in the most prominent government report concerning the education of minority ethnic pupils. That is, ‘The Swann report’ (1985), tellingly entitled ‘Education for all’. Guided by its recommendations, many local educational authorities subsequently introduced an enhanced multicultural curriculum, if not an explicitly anti-racist stance in their teaching. Yet many of the other progressive moves described above were either altered or abandoned during the Thatcher years. Wishing to reduce state intervention to a minimum, Conservative governments of the 1980s used their executive power to introduce competitive quasi-market mechanisms into most areas of public policy, including the education sector. Critics complained that pupils from ethnic and religious minorities were placed at a disadvantage by various measures, particularly the Education Reform Act of 1988, which installed competitive league tables for schools and a national curriculum and called for school assemblies to assume a ‘broadly Christian character’ (e.g. Mabud 1992).¹⁶

In the first half of the 1980s, inner-city riots erupted again, this time in Brixton (1981) and Toxteth (1981, 1985), influencing political decisions once more. The subsequent government inquiry headed by Lord Scarman pointed to complex political, social and economic factors that had created a disposition towards violent protest. It stated that Afro-Caribbean and Asian youths particularly were becoming more and more disillusioned by police racism manifested in, for example, stop-and-search methods and racial profiling. ‘The Scarman report’ recommended greater efforts be made to recruit more ethnic minorities into the police force as well as changes in training and law enforcement (Scarman 1981).

Highly visible political moves aimed at creating trust and better ‘race relations’, like the commissioning of such reports, were important. Yet, critics complained that they often glossed over the true underlying causes of ethnic minority discontent: racism and economic disadvantage (Kundnani 2001). Others bemoaned the ‘benevolent paternalism’ long surrounding British race relations. For example, in their early stages boards of the specially created Community Relations Councils were frequently composed of local public personae from the establishment rather than members of the minority ethnic groups (Crowley 1993).

2.4 *Immigrant- and diversity-accommodating policies from 1997 onwards*

When New Labour came into power in 1997, Blair proclaimed a new phase in policymaking that would be ‘evidence-based’, i.e. pragmatic and non-ideological, thus retaining many Conservative strategies generated under their ‘what works’ approach. Ever since, social inclusion, educational

advancement and labour market inclusion for disadvantaged groups have been high on the New Labour government's agenda (Home Office 2001). Accordingly, a wealth of strategies has been introduced in education, the labour market, health, housing and the police force. Typically, they are concerned with legal frameworks such as anti-discrimination and equality, with mainstream programmes also benefitting ethnic minorities or with targeted programmes for disadvantaged groups, including ethnic minorities. Having declared that his three priorities in office would be 'education, education and education', Blair initiated concerted efforts to raise educational standards, thus making the British economy more competitive. Carrying on with the long-standing mainstreaming approach and the convention of not stigmatising particular groups, ethnic minority pupils' accomplishment was now firmly embedded in 'whole school achievement' and a general raising of standards. Any differential funding was once more allocated through area-based programmes such as Sure Start, Education Action Zones and Excellence in Cities, thereby covering 70 per cent of all minority ethnic pupils in England.¹⁷ At the same time, the educational attainment of ethnic minority pupils was also actively supported through programmes such as Aiming High and the widening of Section 11 funding into an Ethnic Minority Achievement Grant (EMAG) (DfES 2003 & 2005). Employment strategies for ethnic minorities included, among others, the New Deal workfare programmes (Moody 2000; Fieldhouse, Kalra & Alam 2002), the introduction of Employment Zones in 2000, the Ethnic Minority Outreach (EMO) scheme and the establishment of a cross-sector Ethnic Minority Employment Task Force in 2004 (Barnes, Hudson, Parry, Sahin-Dikmen & Taylor Wilkinson 2005; Cangiano 2006).

2.5 *From multiculturalism to community relations and social cohesion*

Until a turning point in 2001, Blair's diversity policies were characterised by a celebration of multiculturalism. This was mirrored in a report written by the Commission on the Future of Multi-Ethnic Britain, a body comprising independent experts that had been created in response to several investigations carried out by the Runnymede Trust. For the Home Secretary in 2000, the commission produced 'The Parekh report', which emphasised the need for shared values and greater equity but spoke of the UK as a 'community of communities' (Parekh 2000). Chairman of the commission Bhikhu Parekh proposed an explicitly proactive form of multiculturalism that would not only tolerate but welcome and celebrate diversity and difference.

The year 2001 is widely regarded as a turning point in British diversity policies. The longstanding multicultural consensus was severely shaken, and the 'race relations' framework transformed into a 'community relations' paradigm. It underlined the need for social cohesion in a society

segregated along socio-economic, ethnic and religious lines. If inquiries and reports had previously emphasised the state's responsibility to enforce anti-discrimination legislation and improve police practice, the new line of thinking was complemented by a more assertive approach demanding greater commitment and allegiance to British citizenship from minority ethnic groups.

Prime reasons for this change of heart were 2001's riots in Oldham, Burnley, Leeds, Bradford and other towns in northern England. The riots erupted as a result of increased tension between the established white majority and growing ethnic minority communities, and involved a confrontation between the National Front and the Anti-Nazi League. In response to the unrest, the Oldham Metropolitan Borough Council commissioned the independent Community Cohesion Review Team. Chaired by Ted Cante, the group was to inquire into Oldham's progress in terms of community cohesion and racial harmony. The result was 'The Cante report' (2001). Entitled 'Community cohesion', it expressed concern that some communities were so segregated they were living 'parallel lives'. As one of four such reports, the account hit a nerve, appearing as it did in a climate of fear. The public was faced with terrorism – notably 9/11 – and the conflict in Iraq along with seemingly unmanageable migration flows and a peak in asylum claims. Frequently, the American-style segregation was now cited as a deterrent example (Ousely, Phillips & Harman cited in *The Guardian* 2005), even though Britain's ethnic super-diversity had never produced de facto the kind of mono-ethnic inner-city 'ghettos' existing in the US.

In the same year, Home Secretary Jack Straw, who had focused on human rights in his policies, moved on to become Foreign Secretary. Straw was succeeded by former Secretary of State for Education and Employment David Blunkett, whose emphasis on 'community cohesion' was more in line with Blair's thinking. Both Blunkett and Trevor Phillips, then CRE chairman, ushered in a return to integrationist policymaking and openly criticised the 'self-segregation' of ethnic communities in Britain. In line with the new thinking, Blunkett took the opportunity to introduce compulsory citizenship lessons in schools, an oath of allegiance for newcomers and English language tests for immigrants. Blunkett also called for the definition of common 'core values' to counter what many perceived as cultural and moral arbitrariness (*The Guardian* 2001). The overarching sense was that the UK had celebrated diversity but not encouraged people to come together and emphasise what united rather than divided them. The new line of thinking was mirrored in statements such as 'multiculturalism is dead' and that Britain is 'sleepwalking [...] to segregation' (Phillips cited in *The Guardian* 2005).

It is unclear whether the change in discourse has really had any direct practical implications, apart from cuts in single-issue initiatives.¹⁸ However, the fact that multiculturalism was now rebalanced through the

government's social cohesion agenda led many to feel that the latter was about fostering assimilation rather than respecting diversity. To their critics, both Cante's and Blunkett's communitarianism-inspired thinking was provocative – a case of blaming the victim by interpreting racism as an outcome of cultural segregation, not its cause (Kundnani 2002). The launch of a cross-government race and cohesion strategy entitled 'Improving opportunity, strengthening society' in January 2005 (Home Office 2005b) illustrated a new approach that explicitly linked racial equality with community cohesion. This new direction in policymaking has also been reflected by a subsequent reshuffling of government departments, as will be described in the next section.

2.6 *Institutional responsibilities under the new policy paradigm*

A good share of the influences on British immigration policymaking on the macro-, meso- and micro-levels described in the first section of this chapter also applies to integration and race relations policymaking. Still, on the macro-level, the influence of EU legislation on national policies is less significant than it is on immigration. The most notable case of EU impact occurred with the passing of the Human Rights Act in 1998, which entrenched the European Convention on Human Rights (ECHR) in UK law. The act strengthens all migrants' rights regarding deportation and extradition, particularly when returnees are at risk of becoming subject to torture, inhumane or degrading treatment or punishment (Human Rights Act 1998). Similarly, the Equality Act of 2006 was driven by the European Commission's Employment Directive of 2000, which obliged member states to outlaw discrimination in employment on grounds of age, disability sexual orientation and religion and belief (Spencer 2008: 7).

Influences on the meso-level are more difficult to identify, as the distinct strands – 'refugee integration', 'immigrant integration', 'ethnic minority and race relations' and 'community cohesion' – are dealt with by various different departments and government units. These include, among others, the Home Office, the Department for Children, Schools and Families, the Department for Communities and Local Government and the Department for Work and Pensions.¹⁹

On the micro-level, responsibility for administration and implementation of race relations policies and the integration of migrants devolved to the local level early on, as will be described in the next passages. This means that the management of intergroup relations – and therefore the bulk of the challenge of integration – is guided less by central government than it is worked out by bureaucracies, the police and local authorities (Schierup 2006). The government's role is to allocate funding to local-level initiatives on the basis of competitive bidding by local authorities.

2.7 *Institutional splits: The Home Office and the Department for Communities and Local Government (CLG)*

The institutional structures and recent reassignment of responsibilities for immigration, integration and minority ethnic relations in the UK government mirror both a tradition of idiosyncratic ideas and current government policy. Most strikingly, a peculiar separation now exists between the UKBA (formerly the IND, which was replaced by the Border and Immigration Agency in April 2007 and itself subsumed into the UKBA in 2008 under Home Secretary John Reid) and the newly founded Department for Communities and Local Government (in short, Communities and Local Government (CLG), formerly Office of the Deputy Prime Minister) (see also Spencer 2010). As will be explained in the following sections, this institutional separation comes as the manifestation of the convention of not linking policies regarding immigrants, refugees and settled British ethnic minorities to one another.

Traditionally, all matters concerning immigration, integration, race relations and communities had been clustered in the Home Office in Whitehall. The accumulation of responsibilities for immigration, prisons and the police force had, however, always been problematic for the Home Office's image (Schierup 2006). In the course of major responsibility reshuffling among government departments in May 2006 under Reid, several units previously responsible for race and social cohesion were moved from the Home Office to the newly founded CLG, then headed by Ruth Kelly. The CLG has since unified responsibility for a comprehensive equality policy, including policies on race, faith, gender and sexual orientation – tasks previously split between several government departments. It was also given the community policy function of the Home Office, which means that the CLG's other responsibilities entail housing, local government, urban policy and neighbourhood renewal. Significantly, this arrangement means that issues concerning race relations have now been institutionally subsumed into matters of human rights, discrimination, equality and 'community relations'. The most visible manifestation of this development was establishment of the Equalities and Human Rights Commission (EHRC) as a single equality body in 2007.

2.8 *Race relations within a single equality body: The creation of the Equality and Human Rights Commission (EHRC)*

The EHRC is a permanent non-departmental – and thus government-independent – public body. After a decade of negotiation, it was established by the Equality Act of 2006 as a response to the European Commission's Employment Directive 2000, which obliged member states to outlaw discrimination in employment on grounds of age, disability, sexual orientation

and religion and belief (Spencer 2008: 7). Founded in 2007, the EHRC now houses the CRE, the Equal Opportunities Commission (EOC) and the Disability Rights Commission (DRC), and is the single equality body of the government. The EHRC's additional responsibilities include overseeing rights in relation to age, sexual orientation, religion and belief in order to promote good 'community relations'.

The EHRC was the result of long bargaining, lobbying by national NGOs, parliamentarians, trade unions, think tanks and a few determined officials (see Spencer 2008). The CRE as the oldest, largest and best-funded equality body with a strong mandate only reluctantly agreed to be included in the EHRC. Not only did it fear that the race relations cause could be diluted by the single body approach, but that funding for local racial equality councils would be cut (*ibid.*). Eventually though, former director of CRE Trevor Phillips was appointed chair of the EHRC, and the CRE also secured as a concession an independent Equalities Review to inquire into the causes of persistent inequality. The final report on the Equalities Review of 2007 – together with the Discrimination Law Review – contributed in part to the Equalities Bill, intended to modernise equality legislation. The bill brings the duty to promote racial equality under a more general duty to promote equality. This is exceptionally innovative compared with other EU countries because it imposes statutory duty on all public bodies, including libraries, museums, etc.²⁰

2.9 *Bringing migration onto the cohesion agenda: The Commission on Integration and Cohesion (CiC)*

The CiC was announced by Kelly in June 2006 as a temporary commission of inquiry. It was set up as a response to the suicide bombings in the London public transport system in July 2005, which had been carried out by four British Muslims of Pakistani and Jamaican descent. Headed by Darra Singh, the CiC's purpose was to produce practical proposals for furthering integration and cohesion, and to prevent extremism at the local level. The commission's final report, entitled 'Our shared future' (CiC 2007), was published on 14 June 2007, after an extensive consultation process, endeavouring to clarify what caused tensions, segregation and conflict in British communities. The CiC recommended the creation of more opportunities for shared experiences and the use of English as a common language. Interestingly, the CiC concluded that the government's perception of the cohesion agenda had been too narrow, insofar as challenges to cohesion were not only about riots in northern towns involving second-generation ethnic minorities. Rather, among the issues possibly causing cohesion problems was the occurrence of rapid new migration in certain areas with little prior migration experience. Advocating that the government broaden its cohesion plan to include migration-related cohesion problems, the CiC

was crucial for getting migration onto the cohesion agenda. It also suggested that a national body, sponsored by the CLG, be established to manage the integration of new migrants (ibid.: 68). In response to the report, the government pointed to the migration directorate within the CLG, declaring it would consider the case for a national integration body and a national strategy for migrant integration. To sum up, it was not until the CiC's establishment that ministers voiced their belief that the time was ripe for including migrants in the local level's cohesion strategy (Spencer 2007).

2.10 Migrant integration: Neither national strategy nor national body

In response to the CiC's recommendation, the migration directorate located at the CLG wrote a review on migrant integration – albeit without a consultation process – that was published a year later in 2008. According to one interviewee, the members of the directorate, with a rather meagre number of staff and lacking resources, saw the review as their chance to grow institutionally. Accordingly, in their review they concluded that there was no need for establishing either a national integration strategy or a national integration body. Instead, they argued that much was being done already in terms of migrant integration, and any additional tasks could be taken on by the existing directorate if better funded (CLG 2008a). The review was supported by the respective select committee's report on the CLG in 2008, which agreed that there should be neither a national integration strategy nor a national integration body, as this would detract from what was happening at the local level. However, having thus successfully argued that there was no need for another body, the independence and status of the directorate was subsequently played down, and the directorate was merged into the cohesion directorate. As one interviewee assessed the situation: 'there wasn't the appetite from ministers or politicians for a new body. Also, they are a bit unclear about whether they want to invest into the integration of migrants.' Another added that there was a hesitation on the government's part to do anything 'that looks like you are doing things *for* migrants.'

Thus, rather than devising an integration strategy for migrants, the CLG has been following an approach that 'manages the impact' of migrants on local communities. This was manifested in a succession of reports that assess the impact that migration is having locally. As a result, in 2008 the Migration Impact Fund was established. Comprising £35 million in the following year, the moneys were distributed among local authorities to help alleviate the pressure their communities were feeling from recent migration. The fund comprises the additional fees charged to non-EU migrants and students coming to the UK (CLG 2009).

To summarise, in line with the thinking that migrants, having come by choice, are more likely to be able – and are rather obliged – to look out for themselves, no explicit national integration strategy exists in present-day Britain. In addition, the correlation between migrant cohesion and integration is rather ambiguous. Within the cohesion framework, the government supports action on the local level in order to promote better relations and a stronger sense of belonging; however, the extent to which migrants are included in this is unclear. In the course of this approach, the CLG has redefined migrant integration to be a (rather narrow) part of the cohesion agenda. As Spencer (2007: 359) states:

The failure to develop a strategy to address the needs of the 1,500 migrants who arrive in the UK each day and their impact on local communities was a surprising omission that left local authorities in a policy vacuum from which they have yet to emerge.

The Home Office has not developed an integration strategy for migrant populations either. The only exception has been a document entitled ‘Multi-annual programme for the European Fund for the Integration of Third-Country Nationals for the period 2007-2013 as part of the general programme “Solidarity and Management of Migration Flows”’. According to one interviewee, the report was produced purely to administer the UK’s share of the EU Integration Fund, and most of it is spent on ESOL language tuition. A notable development was the establishment of the small, independent Advisory Board on Naturalisation and Integration (ABNI), comprising leading experts in the fields of English language testing, citizenship training, employment of migrants, community development and integration. When the UK introduced a citizenship and English language test for those seeking British citizenship with the Nationality, Immigration & Asylum Act 2002, ABNI was charged with developing support services to this end. Most visibly, in December 2004, the board published the handbook *Life in the United Kingdom: A Journey to Citizenship*, which has become a prime preparation source for the citizenship tests (Home Office 2005b). ABNI was wound up after its last report in 2008, and suggestions to merge it into the recommended new integration body (see CLC 2007) were dropped since the government was opposed to its formation.

2.11 *Refugee integration: A national strategy for those who have not come by choice*

Quite peculiarly, the integration of refugees into British society does not fall under CLG responsibility. It is dealt with by the UKBA, which is part of the Home Office and located offsite in Croydon. Conversely, the UKBA oversees the integration of refugees though not of regular immigrants, as

no national integration policy so far exists for them in Britain, as described in the preceding section.

With rising numbers of asylum seekers during the 1990s, asylum and refugee questions came to dominate much of the British political agenda. They also played an important role in government elections, particularly in 2005, as already mentioned. Compared to other European countries, the development of asylum and refugee policy occurred at a relatively late stage in the UK, and specific integration programmes for refugees are only now beginning to emerge. The long-standing dual tradition of keeping as many newcomers out as possible while fostering the integration of those already settled has also become manifest in British refugee integration policies. The Home Office's approach to refugee integration follows the established race relations and multiculturalism paradigms, though new, strategic approaches and additional funding have enhanced their implementation.

In 2000, the Home Office launched a programme entitled *Full and Equal Citizens: A Strategy to Integrate Refugees into the United Kingdom* (Home Office 2000). With some amendments, it has served as the basis for the government's approach up until the present-day. In 2005, it was revised and renamed *Integration Matters: The National Integration Strategy for Refugees* (IND 2005), which, in turn was buttressed by *Working to Rebuild Lives* (DWP 2005), an employment strategy devised in the Department for Work and Pensions. Both strategies aim to provide refugees with support in finding accommodation and employment. Notably, integration policies for refugees are characterised less by the provision of financial support than by personalised services that foster the employability of newcomers. Furthermore, the policies exhibit typical features of New Labour policy delivery, such as partnership models of decentralised implementation and the incorporation of stakeholder groups in the processes (Maile & Hoggett 2001). Other features of the strategy – mirroring New Labour's communitarian ideals – include so-called Personal Integration Plans and the Integration and Employment Service of 2005 (formerly the Sunrise programme), which provide one-on-one consultation and mentoring services to enable refugees to become economically active as soon as possible.

Initially, the voluntary sector was heavily relied upon to take up the franchised work of providing services to refugees. Accordingly, a large number of NGOs, refugee community organisations (RCOs), employer organisations, trade unions and bodies from the voluntary sector play an important role in reception and induction processes, as the following section will describe. Until 2006, these stakeholders were linked and contacted through 'user panels' and formal consultations by the National Refugee Integration Forum (NRIF). The NRIF was established by the Home Office in 2001 to implement, monitor and develop the government's 'Full and Equal Citizens' strategy (Home Office 2000) which assists the integration into

the UK of those granted leave to remain. Whether user panels have really impacted on government policy via parliamentary committees, campaigns, reports and press releases is, however, doubtful (Ensor & Shah 2005), and the Home Office announced in 2006 that the NRIF would be wound up in the same year (Ryan 2006). Meanwhile, in 2005, the outsourcing of refugee integration was reconsidered. Because provision was felt to be uneven, the government decided to set up the Refugee Integration and Employment Service (RIES). Contracted out to twelve regions, the RIES provides advice and support for a twelve-month period to each recognised refugee. According to the Home Office website, by the end of the period RIES contractors can expect to see – a whopping – at least 30 per cent of their refugee clients in employment.

Again, the rather exceptional fact that the Home Office has set up a comprehensive integration strategy for refugees but not for migrants mirrors a particular line of thinking. That is, regular immigrants are likely to be higher skilled and thus both willing and able to ‘integrate’ – while, at the same time, there is no moral obligation for the state to support those who have come by choice.

2.12 *Policy delivery: The role of voluntary sector organisations and the local level*

A New Labour trademark has been to grant the third sector a key role in delivering integration and welfare services to newcomers. The situation has been described as resembling a ‘shadow state’ (Findlay & Fyfe 2006; see also Somerville 2007: 79), where voluntary organisations not only depend on government funding but are simultaneously subject to tight government regulation. This dependency was exemplified in Blair’s (2006) suggestion to ‘assess bids from groups of any ethnicity or any religious denomination, also against a test, where appropriate, of promoting community cohesion and integration’.

Naturally, most of the actual refugee integration work that is set out in the national strategy is delivered on the local level, particularly in larger cities such as Birmingham, Manchester and London. London has for a long time been a hub of immigration, and is the single most important destination for newcomers to Britain. According to 2001 estimates by the Greater London Authority (GLA), London hosted 85 per cent of all refugees and asylum seekers in the nation, which made 5 per cent of all Londoners refugees or asylum seekers who had arrived within fifteen years prior to the estimate (GLA 2001). By far, most of the city’s integration efforts focus directly on enhancing the employability of refugees, though this endeavour encompasses a range of services. These include education and training, English language support – English as a Second or Other Language (ESOL) or English as an Additional Language (EAL) – promoting the

recognition of qualifications gained abroad, fostering acculturation to British society and the specific labour market demands, mentoring, encouraging and supporting entrepreneurship, building social and community capital, and signposting refugees, i.e. referring them to further agencies (Green 2005).

A complex patchwork of national, regional and local agencies dealing with integration issues has developed in London to meet these demands, albeit in a piecemeal fashion. This intricate web of organisations includes government bodies, voluntary agencies, NGOs and RCOs. On a local level, RCOs provide training and counsel for refugees who fall outside mainstream provision and negotiate with employers for work placements. As low-threshold institutions that are in direct contact with refugees and asylum seekers, they also play an important role in fostering social capital and community networks. However, the fact that RCOs must compete for funding means not only that they invest a considerable amount of energy into ensuring resources, but also that their work is often hampered by the short-termism this arrangement brings about (*ibid.*). The work of local RCOs is complemented and coordinated by meso-level agencies such as Renewal in West London, Refugee Education and Training Advisory Services (RETAS) and Partnership for Refugee Employment (PRESTO). Yet as pointed out before, the incalculability of funding streams from both the government and the European Social Fund. Moreover, the fragmentation of the public sector creates a general instability in the institutional framework of such organisations. Critics have also pointed out how the complexity of the system makes it hard to have an overview for refugees and employees alike, and prohibits efficient best-practice sharing and evaluation (*ibid.*). These weaknesses led to the creation of city-wide coordinating agencies, most notably the London Refugee Economic Action (LORECA) as the pan-London authoritative body on employment, enterprise and training for refugees and asylum seekers. LORECA speaks with the government, employer bodies, funding organisations and training providers on behalf of refugees and asylum seekers. Furthermore, successive mayors of London have taken over city-wide strategic responsibility for refugee integration and created coordinating structures (e.g. Mayor of London 2005, 2006a, 2006b, 2009).

Local-level integration illustrates how the local and the national levels can work together, but also how points of conflict can arise between the two. Successful cooperation is exemplified by the fact that the national level – the Home Office – and the local level – the Mayor of London – equally strive to improve the public image of refugees and asylum seekers. To this end, the national ‘Integration Matters’ framework emphasises refugees’ positive contributions to the British economy and cultural life (IND 2005). A point of conflict between the cities and the national level, however, is that national legislation distinguishes between the phases before

and after a potential refugee's reception, as far as their integration is concerned. That is, there is a clear legal distinction between asylum seekers and recognised refugees, which has undeniable consequences for their rights and treatment. National law prohibits asylum seekers from taking up paid employment; yet, cities and local-level agencies have been arguing that the reception phase – the period between the person's arrival and their actual recognition as a refugee – has crucial bearing on their later experience. Cities would much prefer asylum seekers in the reception phase be allowed to work. This would improve their living and housing conditions and enhance their ability to integrate later on, thus relieving local authorities from the high costs accompanying this situation (City Statement 2003).

2.13 *The focus on Islam and violent extremism*

As Somerville (2007) has remarked, since its 1997 election, the Labour government has engaged with Muslim communities in a notable way. Created a half-year after the election was the government-supported Muslim Council for Britain (MCB). Following the 7 July 2005 London bombings, however, policymaking has been overshadowed by fears of 'home-grown terrorism'. In its aftermath, the government embarked on a dual strategy of ascertaining rights regarding faith and religion (such as passing the Religious Hatred Act in 2006, for which Muslim communities had long lobbied) and attempting to prevent violent extremism. This meant that within its community relations approach, the government endeavoured to build and improve its dealings with moderate Muslim groups and organisations. Working groups comprising Muslim opinion leaders and experts on Islam dealt with questions such as how to recruit more Muslim police officers and how to go about educating imams in the UK. Forums, groups and bodies of influential Muslim scholars were encouraged to engage in outreach programmes to counter violent religious extremism among young Muslims (e.g. CLG 2007). The political discourse was characterised by a renewed emphasis on what were perceived to be the core values of 'Britishness'. Among the most heated debates in this regard were those concerning government funding for faith schools and veil-wearing – matters that are in fact still debated (BBC 2007).

3 Conclusion

Comparing British immigration and integration policymaking to that of other European nations, we may establish several features that distinguish the UK's case. As previously noted, British immigration politics began differently from those of other economies. Rather than recruiting guest

workers²¹ on a large scale after World War II, successive British governments were forced by both popular and elite opinions to continually restrict immigration from the Commonwealth by regularly refining the legal concept of belonging.

A further distinction between the UK and other European countries is visible in Britain's institutional policymaking. Whereas the UK and, for example, Germany were 'the most determined to avoid the appellation of "immigration countries"' (Freeman 2006: 238) despite the fact that both received high numbers of immigrants and asylum seekers, Britain has proven much more determined to realise its goal of control; overall, the British state has shown an exceptionally strong hand in restrictive immigration policymaking. In contrast to Continental Europe, British courts have not functioned as effective opponents to the executive power because of parliamentary sovereignty and common law restraints, at least until the passing of the 2000 Human Rights Act. Parliament has leeway to formulate immigration policy according to restrictionist public opinion, whereas the executive power more or less locks in the implemented policy (Joppke 1999). As a result, the Home Office is fully in charge of immigration policy, and the Home Secretary reigns with absolute authority. Nevertheless, the government and the Home Office are increasingly willing to consult with a wider audience over proposed legislation, especially with trade unions, business organisations, NGOs and academic researchers. At least in theory, stakeholders are offered the opportunity to influence political decision-making. Within this arrangement, the Prime Minister carries little more than a representative function and usually only voices his opinion in public if highly politicised issues are at stake. For example, in December 2006, Blair announced that radical Muslims had a 'duty to integrate' into British society and warned that they would not be allowed to override what he described as the country's core values of democracy, tolerance and respect for the law.

We have further noted how British legislation concerning immigration and 'integration' – the latter hardly ever even referred to as such – have mutually justified each other ever since the 1960s' first implementation of immigration restrictions. Significantly, however, the policies were both terminologically and institutionally separated from each another, being labelled 'immigration' and 'race relations'. Indeed, in stark contrast to some other European countries, it became unacceptable very early on in the UK to refer to settled ethnic minorities as 'immigrants'. This taboo was paralleled both by a hesitation to speak about the integration of minority ethnic groups and the sharp focus on social class rather than ethnic background as the main factor for explaining differential achievement in the education system or on the labour market. As early as the 1950s, it became clear that the newcomers were there to stay and needed to be given a fair chance to succeed in British society. Yet the integration policy was also officially

defined early on as explicitly non-assimilationist. Quite the opposite, ethnic minorities were encouraged to adhere to any cultural traits they might wish to retain. At the same time, they were functionally integrated into the labour market and politics, frequently on the local level (Favell 1998). Immigrant and ethnic minorities were thus 'nationalised' as actors into social and political institutions (Geddes 2003) in an idiosyncratically British manner.

At the same time, the UK has been a forerunner in terms of equal opportunity policy, anti-discrimination legislation and anti-racism campaigns. The unusually early and comprehensive pieces of anti-discrimination legislation – the most far-reaching in the EU – illustrate British governments' penchant for incremental and pragmatic integration policymaking. The loopholes in existing legislation were frequently amended on the basis of highly visible reports that were commissioned by the government or non-governmental bodies. Furthermore, the Race Relations Acts embody the UK's remarkable commitment to anti-discrimination and creating conditions of equal opportunity. A general sense of fairness dictated that, once admitted, immigrants were not to be treated as second-class citizens, and the same sense of fairness also ruled out affirmative action as it would grant certain groups preferential treatment over others. British policymakers have always been extremely careful not to separate minority ethnic groups from the mainstream along racial or linguistic lines, fearing both the stigmatisation of particular groups and the public backlash against preferential treatment.

Both the race relations paradigm and the commitment to multiculturalism have proven stable and resilient, even if the concepts became contested near the beginning of the twenty-first century. Debates about the public display of ethnic or religious symbols have typically been handled in a pragmatic way rather than as a matter of principle in Britain, and they never assumed the ideological tone or dimension seen in France and Germany. To name two most prominent examples, in the UK, Sikhs are allowed to wear turbans instead of safety helmets on a construction site though are held liable for any injuries that would not have been sustained if they had been wearing a helmet (paragraph 11 of the Employment Act 1989). Similarly, Muslim girls are generally allowed to wear headscarves and veils (though not a full-face niqab) at school as long as they display the school colours. In Britain, such controversies have usually been solved on the level of individual schools rather than by politicians or even national law. Much of the flexibility and lenience in such matters, as well as the multicultural paradigm and the institutionalisation of race relations have been inspired by the American example rather than by Continental European legislation. This includes the current pervasiveness of 'politically correct' speech. For example, government documents refer to 'minority

ethnic' rather than 'ethnic minority' communities, acknowledging that all citizens belong to one ethnicity or another.

Representing a liberal welfare state in which commitment to redistribution and the acceptance of de commodification are comparatively low, British politicians openly phrase both immigration and integration in terms of the country's economic benefit. Immigrants who are potentially able to fill labour market shortages have always been given preference, and integration efforts for refugees have aimed at enabling them to become economically active as soon as possible. Accordingly, British governments have engaged in policy transfers and obviously learned from policy in countries following similar economic rationales such as the US, Canada and Australia. By contrast, the UK's opt-outs from the Schengen agreement and other EU directives (e.g. the Blue Card) that were perceived as potentially harmful clearly demonstrate British ambivalence towards EU regulation. Thus, the UK has embraced efforts to harmonise legislation on asylum and illegal migration, but has not agreed to a common policy on border abolition.

Some observers claim that the recent shift in discourse and policies from 'race relations' towards 'community relations', 'social cohesion' and the definition of 'core values' has indeed been influenced by Continental European developments and fears. The tensions that arose between an explicitly non-assimilationist multiculturalism and persistent problems – of racism, labour market problems, educational underachievement and housing segregation – coupled with terrorist attacks and heightened security needs, have paved the way for a change in government thinking that in many ways mirrors developments in Continental European countries. There 'too much diversity' had been sooner suspected of fostering segregation. During the British economy's boom, which lasted for a number of years, politicians emphasised the economic benefit that immigrants brought into the country. Yet after the 2008 economic crisis, the government has returned to more restrictive policies and has focused on limiting abuses of the system. It is still uncertain whether the consensus on immigration can endure the tough present economic conditions. And it also remains to be seen how British governments will respond to the new challenges we described in this chapter.

Notes

- 1 The authors would like to thank Martin Ruhs, Will Somerville and Sarah Spencer for providing information and advice on the chapter as well as the three anonymous reviewers for their helpful comments.
- 2 Labour vouchers are specified as follows:
Category A: for those promised a specific job by a specific employer, Category B: for individuals with training, skill or education useful to the British economy and

- Category C: for unskilled workers without a specific job in the UK (combined quota for A and B: 20,800; quota for C: 10,000 per year) (Hansen 2001: 77).
- 3 Patriots 'were all citizens of the United Kingdom and colonies born in or with an ancestral connection to the UK, citizens who had settled for at least five years, and – this was a novelty – any Commonwealth citizen with a parent or grandparent in the UK' (Joppke 1999: 111).
 - 4 British Citizenship was specified for those with close ties, i.e. patriots. BDTC was granted to persons in dependent territories, including Hong Kong, Bermuda, the British Virgin Islands and Gibraltar. BOC was granted to all citizens of the UK and its colonies – mostly stateless persons living in the independent member countries of the Commonwealth, mainly East African Asians and Malaysians (Geddes 2003; Hansen 2001).
 - 5 A-8 countries comprise Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia and Slovenia.
 - 6 The 1971 Immigration Act and non-statutory Immigration Rules dealt with asylum to that point (Macdonald & Blake 1991).
 - 7 Layton-Henry characterises the UK as a 'zero immigration country', a paradoxical term since the country was admitting a large number of immigrants through different schemes.
 - 8 Though the government published a draft partial Immigration and Citizenship Act in July 2008 to consolidate immigration, it decided that it was not ready to introduce such an act in the current session and postponed plans to see it through. Parliament was presented with the Borders, Citizenship and Immigration Act. It became the eleventh immigration act on the statute book when it received Royal Assent in July 2009 (Symonds 2009).
 - 9 MORI is the second largest research company in the UK.
 - 10 The idea is that even political parties advocating more stringent regulations for asylum protection will present more lax policies in order not to lose out in the competition with other parties.
 - 11 For a detailed analysis of WHMS and subsequent changes, see Somerville (2007: ch. 15).
 - 12 This practice has taken a different direction since London's 2005 terrorist bombings, which were carried out by British citizens of Muslim faith. It was mirrored by the passing of the Religious Hatred Act in 2006 and increasing attempts to measure disadvantages along religious rather than ethnic lines (see e.g. Khattab 2009).
 - 13 Yet, in contrast to many other European countries, British educational policy for ethnic minority pupils was soon concerned with more than the language question. British policymakers and educationalists went extraordinarily far in their attempts to analyse and remedy the lower differential educational attainment of certain ethnic minority groups. In this ongoing process, various factors that could potentially contribute to academic disadvantage – ranging from socio-economic background, teachers' racism, low expectations, the 'school effect' and family ethos to mono-cultural curricula – were scrutinised and taken into account (see e.g. Coard 1971; Mortimore, Sammons, Stoll, Lewis, & Ecob 1988; Smith & Tomlinson 1989; Gillborn & Gipps 1996).
 - 14 As Somerville (2007: 18) has pointed out, scholars disagree on where pressures for a liberal race relations policy came from. Joppke (1999) favours an interpretation of top-down, rather paternalistic elite policies, while Sivanandan (2006) sees bottom-up, worker-led activism as its source.
 - 15 The Equality Bill introduced to Parliament in 2010 may be considered the most recent element in this strand of proactive legislation. However, the aforementioned policies and their subsequent equality and social cohesion strategies focused mainly

- on ethnic minorities of the second and third generations rather than on recent immigrants and refugees.
- 16 As early as the 1960s, quantitative research conducted by the Policy Studies Institute (formerly PEP) pointed out the disadvantages ethnic minority newcomers, particularly black Caribbeans, Indians and Pakistanis, were experiencing in the labour market (Daniel 1968; Prandy 1979; Chiswick 1980; McNabb & Psacharopoulos 1981; Heath & Ridge 1983; Stewart 1983). While the first generation of immigrants was concentrated in manual work, findings concur that over the 1970s and 1980s, ethnic minorities as a whole made considerable progress in the British labour market, and that many minority groups had largely caught up with whites in terms of occupational attainment. Indian men occupied professional, managerial and other non-manual work at levels close to whites, while this percentage was significantly lower for West Indians, Pakistanis and Bangladeshis (Iganski & Payne 1996). This positive trend came to a halt in the 1990s, even though the labour market improved in these years as the British economy overcame the recession and unemployment fell from 8.6 per cent to 5 per cent between the 1991 and 2001 censuses (Clark & Drinkwater 2007). Today's situation is particularly concerning for black Caribbeans, Pakistanis and Bangladeshis, whose unemployment rates double that of whites, while Indians and Chinese have been able to narrow the gap. In general, ethnic minorities find it difficult to obtain high-ranking executive positions (*ibid.*).
 - 17 As of 2006, about half of the ethnic minority population resident in Britain was born in the UK (Simpson, Purdam, Tajar, Fieldhouse, Gavalas, Tranmer, Pritchard & Dorling 2006). Significantly, since British official statistics rarely ever distinguish between 'ethnic minorities' and 'immigrants', it is difficult to provide attainment statistics that only apply to settled minorities and exclude recent arrivals.
 - 18 This issue was tabled by the CiC in its 2007 report entitled 'Our shared future'.
 - 19 A number of cross-departmental strategies and influences exist. For example, with the Education and Inspections Act of 2006, the government obliged schools to 'promote community cohesion' from 2007 on, including monitoring their performance in this realm in Ofsted inspections.
 - 20 The EHRC was not given an overt mandate for migration-related issues, though has chosen to take a greater interest in migration than the CRE had done. In practical terms, this means working with colleagues from the Migration Policy Institute (MPI) in Washington, D.C., and writing a number of reports for them under the community relations mandate of the commission. Still, according to one interviewee, the commission is not leading on migrant integration though has redefined the issue as being about good relations between people.
 - 21 The mere lack of labour restrictions on countries that joined the EU in 2004 can be regarded as a labour recruitment scheme.

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PART II

MEDITERRANEAN MIGRATION COUNTRIES

7 The case of Italy

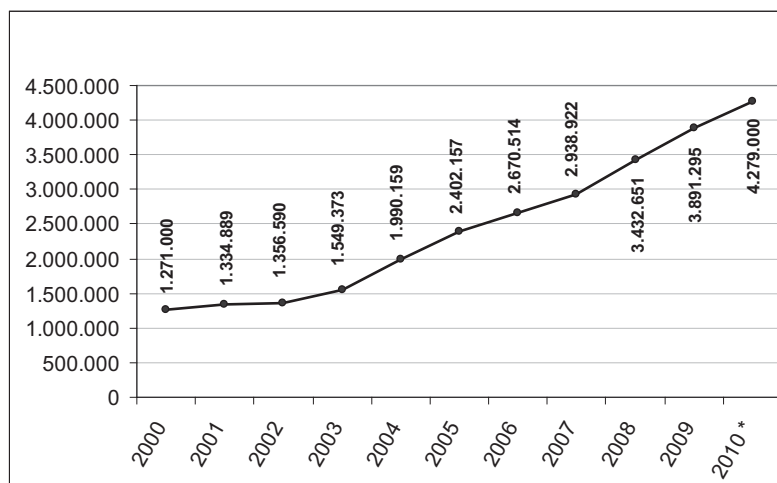
Giovanna Zincone

1 Introduction¹

1.1 *Inflow trends and contradictory approaches to management*

In the European context, Italy became a country of immigration relatively late. The first positive balance between emigration and immigration (return immigration included) dates to 1973. Inflows started after the oil crisis of 1973, when the United Kingdom, Germany² and, in particular, neighbouring France closed their borders to immigrants. Flows were partially diverted towards Southern Europe not only because more attractive receiving countries had introduced zero immigration policies, but also because during the late 1970s and early 1980s, regions of low productivity in Southern European countries started to face a labour shortage (King, Fielding & Black 1997: 13; Morén-Alegret & Ruiz 2007). Furthermore, the previous Italian economic boom, which had reduced the per capita income gap with other European countries, rendered many jobs unattractive for Italian nationals. Lastly, low fertility rates led to an aging population, which, combined with scant social services devoted to elderly care, attracted caregivers from emigration countries (Einaudi 2007). In the mid-1970s, however, Italy was not yet a country of immigration and did not perceive itself as such. Though the 1981 Census revealed an unexpectedly 'high' number of foreign residents (210,937), the first big flows occurred later, between 1984 and 1989, when approximately 700,000-800,000 people entered the country. Of these, it is estimated that 300,000-350,000 entered or remained in Italy without a valid residence permit (Mauri & Micheli 1992).

We can thus begin to single out three significant features of immigration in Italy: rapid inflow, substantial volume and a high proportion of undocumented immigrants. These features are also shared by Spain (González Enríquez 2009) and, as far as the high proportion of undocumented immigrants goes, by other Southern European countries as well. Such patterns can be attributed not only to these nations' economic structure or geographical location, but also to their immigration policies. A discrepancy between planned legal inflows and the society's actual needs (Finotelli & Sciortino 2009; González Enríquez 2009; Triandafyllidou 2009; Peixoto, Sabrina & Abreu 2009) caused Spain to resort to regularisation on an individual basis. Meanwhile, in addition to Italy, Spain and Portugal have also

Figure 7.1 *Residence permits on 1 January, 1992-2008*

Source: Italian National Institute of Statistics (2008)

* Estimated

passed frequent regularisations, indicating that illegal back entry is a viable alternative.

Minor regularisations were initially introduced in 1977 and 1982, though the major ones started in 1986. The largest regularisation – of more than 600,000 persons – was passed in 2002 by a centre-right government. It was followed in 2009 by a mass regularisation covering some 300,000 applications, though the measure was limited to caregivers and domestic workers, many of whom used to be Romanian immigrants exempted after 2007 from holding a stay permit (see Table 7.1).

Since 1986, Italy had adopted a policy of planned inflows meant, in principle, to manage immigration. However, many inflow decrees were introduced and sometimes intentionally increased in order to regularise immigrants already present in the country. This was particularly the case of the supplementary flow decree of 26 October 2006, by which Romano Prodi's centre-left government actually regularised 350,000 migrants, exceeding the 170,000-person quota established by the previous centre-right government's annual inflow decree of 15 February 2006. The following year, the centre-left government voted for a 170,000-person decree, insufficient to cover all the applications, but the government was too shaky to pass a new integrative decree, as this would alarm Italy's public opinion. In 2007, Silvio Berlusconi's centre-right government voted for an identical 170,000-person decree, but more than 750,000 applications were received. In 2008, due to the worsening economic crisis, the government decided to reduce the planned quota to 150,000. But the 'new' 150,000 immigrants to

Table 7.1 *Regularisation measures in Italy, 1986-2009*

Year	People regularised
1986	105,000
1990	222,000
1995	246,000
1998	215,000
2002	634,728
2009*	300,000

Source: Ministry of Interior (2009)

* Data only pertains to care givers and domestic workers.

be admitted were selected from the previous year's excess applications. As such, an intent to use the inflow decree to regularise immigrant workers already present in the country had become very clear.

Here there emerges a first important feature in Italian decision-making: an inevitable partial convergence between centre-right and centre-left policies due to policymaking persistently being pulled in two directions. Decision-makers in Italy have had to find a middle ground, striking a balance between the public demand for control over illegal immigration and reduced inflows, on the one hand, and employers' pressure to regularise undocumented immigrants and open the borders to immigrant labour, on the other. Different inputs produce these contradictory outputs. Insufficiently controlled or hyper-regulated inflows encourage further irregular inflows. Repeated amnesties aimed to remedy the large strata of irregular, albeit employed, immigrants are a magnet for further irregular inflows. A large informal economic sector allows immigrants to enter the country as clandestine or, more often, on a tourist visa, possibly to overstay until they find a job on the black market.

The rapid increase of Italy's immigrant population is the result of regular and, more often, regularised entries. Between 2000 and 2010 (see Table 7.2), some 300,000 persons registered in the country each year.³ Italian immigration is also quite fragmented, though less so than it used to be. On 1 January 2001, the top three nationalities (Moroccans, Albanians and Romanians) made up 26.7 per cent of total immigration to the country. By 1 January 2010, the same top three (with Romanians coming in first) had already come to comprise 43.4 per cent. Although less fragmented than in the past, immigrant communities are still highly diversified, which makes tailored policies difficult to conceive. As so happens in other countries, the distribution of immigrants is uneven (Table 7.3). Immigrants tend to concentrate in northern regions – Lombardy alone is home to nearly 25 per cent of all immigrants. They are concentrated in big cities like Milan and Rome, but they represent the highest percentages of immigrants within the

Table 7.2 *Foreign residents on 1 January, 2000-2010*

Year	Foreign residents
2000	1,271,000
2001	1,334,889
2002	1,356,590
2003	1,549,373
2004	1,990,159
2005	2,402,157
2006	2,670,514
2007	2,938,922
2008	3,432,651
2009	3,891,295
2010	4,279,000*

Source: Italian National Institute of Statistics (2010)

* Estimated

Table 7.3 *Top ten immigrant minorities, 1 January 2010*

Resident foreigners 2009			Resident foreigners 2010*		
	Country of nationality	Number of people		Country of nationality	Number of people
1	Romania	796,477	1	Romania	953,000
2	Albania	441,396	2	Albania	472,000
3	Morocco	403,592	3	Morocco	433,000
4	China	170,265	4	China	181,000
5	Ukraine	153,998	5	Ukraine	172,000
6	Philippines	113,686	6	Philippines	120,000
7	Tunisia	100,112	7	Moldavia	109,000
8	Poland	99,389	8	Poland	107,000
9	India	91,855	9	Tunisia	105,000
10	Moldavia	89,066	10	India	105,000

Source: Italian National Institute of Statistics (2010)

*Estimated

resident population in medium-sized cities like Brescia and Pisa as well. In Italy, as elsewhere, the concentration and subsequent higher visibility of immigrants is being met with resistance, as such countries are unfamiliar with consistent settlement by foreigners. In turn, anti-immigrant backlashes induce more severe attitudes within the political elite – generally irrespective of the politicians being, at least in principle, progressive.

1.2 *Challenges and policies*

Since Italian immigration did not reach any level of consistency or visibility until the beginning of the 1980s, it is not surprising that relevant policies only began a few years later. At first, the main aims were to prevent displacement of Italian workers and to fight illegal entries (Act no. 943, 30 December 1986). The latter was also a requirement for admission to the Schengen Area in 1997. As time went on, increasing integration problems became more evident, as did the need to repress trafficking and to cope with a disquieting increase in crime perpetrated by immigrants. These problems were key factors in motivating various measures of both centre-left and centre-right governments.

By contrast, origins of legislation on the acquisition and loss of nationality, which can be considered a relevant aspect of the legal treatment of aliens, date back to the period immediately following unification of the country (i.e. 1861). And until very recently, this legislation had been shaped by the consistent will of lawmakers to recognise and reward the Italian Diaspora. This chapter will endeavour to reconstruct the evolution of nationality laws⁴ as well as of immigration and immigrant integration policies – the topics being addressed in different sections. In Italian legislation, measures concerning immigration and those defining immigrants' rights are usually included in the same provisions, whereas nationality is dealt with apart. Only recently were both nationality and immigration and partial provisions for immigrants scattered in pieces of legislation concerning public security. It is nevertheless more convenient to treat the two sets of measures separately in this analysis. As for asylum policies, they do not play a crucial role in Italian policymaking; asylum is not frequently used by undocumented immigrants as a back door, due to another opportunity: entering the side door of overstaying.⁵ Its related policies are often dealt with under immigration policy and, furthermore, they often represent a mere – though not always faithful – reception of EU directives.

A parallel analysis of nationality laws and immigration and integration policies should enable the main characteristics of the Italian policymaking process to be singled out, along with its continuity and changes.

Up until the centre-right's return to power in 2008, most of the regulations concerning nationality, immigrants' rights and immigration flows in Italy were the result of three main acts: the 1992 Nationality Law (no. 91, 5 February), the 1998 Law on the Regulation of Immigration and the Legal Status of Foreigners in Italy (no. 40, 6 March; then Consolidated Act no. 286, 25 July) and the 2002 centre-right reform entitled Norms Concerning Immigration and Asylum (no. 189, 30 July). The centre-left's brief return to government, which lasted from May 2006 to May 2008, produced important bills that were ultimately not passed by Parliament. Under the new Berlusconi government, measures concerning immigration

and nationality were included both in bills and acts concerning public security (Acts no. 125, 24 July 2008; no. 94, 15 July 2009). The positioning of the last measures is an indicator of the current government's prevailing security-oriented attitudes.

But before devoting more attention to the contents and making of the main acts and the political processes and public measures connected to them, it would be useful to trace their social and cultural roots.

2 A genesis of nationality law and immigration and immigrant policies: The legacy of the Great Migration

To explain the evolution of immigration policies in Italy, we need to look at the legacy of the so-called Great Migration, which began in the mid-nineteenth century and exploded between 1890 and World War I.⁶ The key relevance of emigration in modern Italian history is reflected in the development of nationality law and, even if to a lesser extent, in the very first immigration and immigrant policies. To facilitate an understanding of how policymaking evolved in Italy, this chapter first considers the nationality laws that were shaped by emigration. It then looks at immigration and immigrant policies that were subsequently influenced, largely by other factors. Emphasised here are nationality's very peculiar decision-making features: continual delays in reforms, the issues not being debated up until quite recently and then, by contrast, the topic's becoming a hot, divisive issue within the centre-right majority and eventually a cause for its split.

2.1 Nationality and citizenship

Even before mass emigration, *jus sanguinis* was the main mode of acquiring citizenship for people living in the country. The relatively late Italian state-building process took place in the context of liberal-nationalist ideologies and movements that spread throughout Europe in the nineteenth century. These movements asserted the ethnic dimension of the state and a belonging to the nation by descent. Furthermore, the 1804 Napoleonic Code adopted *jus sanguinis* as a main criterion, and this principle was propagated throughout Continental Europe. *Jus sanguinis* was also a principle of Roman law that Italian legislators and scholars once studied and so admired (Grosso 1997). Accordingly, *jus sanguinis* was introduced in the first Italian Civil Code of 1865.⁷ The criterion was reinforced over time by the increasing adoption of measures favouring the retention and reacquisition of nationality for expatriates and their descendants, sometimes giving foreigners of Italian origin rights that were usually reserved to citizens.

The present Italian co-ethnic approach is a long-lasting consequence of large-scale Italian emigration. Maintaining close links with communities of

Italian descent was judged to be useful for a set of reasons. It was suggested that Italians abroad acted as a vital vehicle for the country's economic and strategic interests in the international arena (Vianello-Chiodo 1910), being a lobby for the country of origin in the receiving country (Luconi 2000; Luconi & Tintori 2004; Tintori 2006). To allow expatriates to maintain Italian nationality was seen as a way of maintaining these desirable ties. The main obstacle to this strategy was the acquisition of a foreign nationality, which legally implied the loss of Italian citizenship. The main destination countries of Italian migrants applied *jus soli*, and even automatic naturalisation of residents,⁸ while the Italian Civil Code of 1865 (article 11, paragraph 2) did not permit dual nationality. The 1912 Nationality Law no. 555 reaffirmed the principle of *jus sanguinis* as the main criterion for access to nationality, complementing it with the principle of *jus soli* upon reaching majority, in partial imitation of the French model at the time. Dual nationality was allowed for minors holding a foreign nationality. They were asked to choose between the two nationalities upon reaching majority, though the urgency to make a choice was not clearly expressed. Italian Parliament accepted a *de facto* toleration of dual nationality in exchange for keeping strong ties with the Italian descent abroad (article 7). For many emigrants, Italian citizenship became a sort of dubious latent nationality, or a *cittadinanza di riserva* ('spare nationality') that could be appealed when needed (Quadri 1959: 323). The co-ethnic approach gave way to ethnic nationalism and eventually to racist and anti-Semitic legislation under the Fascist regime, which also deprived expatriate dissenters of nationality.

The fall of the authoritarian regime in Italy, as in other European states then and afterwards, was followed by the introduction of a new democratic constitution. It was written as a strong antithesis to the racist and politically repressive norms that had characterised Fascism. It forbade any kind of political, gender-based, religious or racial discrimination (article 3), and made it illegal to deprive a person of citizenship for political reasons (article 22). Nevertheless, the same 'non-discriminating' Constitution still included a co-ethnic preferential principle: 'as far as admission to public offices and elected positions is concerned, the law can equate Italians not belonging to the Republic with citizens' (article 51, paragraph 2). The Republican Constitution went into effect in 1948.

2.2 *Immigration and immigrants' rights*

Passports were first introduced in Italy under Napoleonic Code. Being essentially an emigration country, Italy was not concerned with immigration in its early post-unified history. Procedures to enter and reside in Italy were initially borrowed, along with a great deal of the legal system, from the Kingdom of Piedmont and Sardinia, the pre-unitary state that had conquered and unified the peninsula. Severity in the admission of aliens to the

country, as in other European states, was inversely related to the social status of the foreigners (Einaudi 2007). Surveillance and repression were applied to the potentially rebellious working class and to subversive political activists, but others were quite welcome. The 1865 Civil Code gave foreign residents the same civil rights enjoyed by citizens, going beyond the reciprocity principle. Since Italy was a liberal regime, religious pluralism was established. And even though the Catholic religion was ‘the religion of the State’ (article 1 of the Constitution at the time⁹), freedom was guaranteed to other denominations. This freedom was addressed to autochthonous Jewish and Protestant minorities, rather than to immigrant groups who were yet to arrive.

Generally speaking, legislation was quite tolerant and liberal until the rise of Fascism. As in other European countries with a similar institutional fate, this was when a considerable clampdown on border controls took place, due to the assumption that foreigners could be potential fomenters of internal dissent. According to the 1926 Public Security Consolidated Act, foreigners had to register at police stations within three days of arrival (article 143); employers had to notify the authorities within five days of hiring a foreigner and within 24 hours of firing one (article 146). Foreigners could be expelled if convicted of a crime or for disturbing public order (article 151). The Centralized National Register of Foreigners was established in 1929 and, as of 1930, visas started being required for some countries. The security-oriented slant of Fascist legislation still persists in the Italian democratic republic. A persisting orientation towards security is due both to the relative continuity of the legal system, despite the downfall of the regime, and to recurrent fears of antidemocratic autochthonous terrorism with possible international links.¹⁰ The current threat of transnational terrorism and high immigrant crime rates have given severe provisions a new lease on life.

After the fall of the Fascist regime, it was not until the mid-1980s that approval came of new relevant pieces of legislation on the treatment of foreigners as immigrants.

3 Nationality policies and policymaking from 1948 to the present

3.1 *From the 1948 Constitution to the 1990s: Between gender equality and the myth of the Italian Diaspora*

In post-war democratic Italy, two factors shaped nationality policies: the enforcement of gender equality, introduced by the Republican Constitution (article 3), and the myth of the diaspora abroad – *L'altra Italia* (‘the Other Italy’). The latter, by far the more dominant ethos, concealed a sort of ‘discreet nationalism’, an ethnocentric orientation, the only kind of nationalism

legitimated before the rise to power of openly xenophobic parties and politicians in the 1990s.

The principle of gender equality embodied in the Constitution did not have an immediate effect as far as nationality was concerned. But it was 'user-ready' for the magistracy in the 1970s, when equal rights principles took hold of the Italian legal system in the wake of the feminist movement. In 1975, women married to a citizen of another country were granted the right to retain their nationality within the general Family Reform Act (no. 151, 19 May). This change was not brought about – as might be expected – by the need to comply with international law, but through following the Constitutional Court's ruling (no. 87 of 9 April 1975), which had stated that loss of nationality for married women contravened the gender equality principle embodied in article 3 of the Constitution.

In 1983, following a new Constitutional Court ruling (no. 30, 9 February), a new act (no. 123, 21 April) established the right for married women to transfer their nationality both to their children and to their foreign husband. The commentary on the acts made explicit reference to the court's judgment and to the constitutional principle of gender equality. Constitutional norms and constitutional review, more than international treaties,¹¹ seem to have played a crucial role in supporting nationality reforms. In Italian decision-making, Joppke's thesis (1999) emphasising the Constitutional Court's role seems to work better than Soysal's focus on international law (1994), though both underestimate the role of civil society and movements in activating otherwise dormant pieces of national and international legislation.

The 1983 act confirmed the prohibition of dual nationality as a general principle, making an exception only for spouses. Children of parents of different nationalities were required to opt for one nationality within a year of turning eighteen.¹² Nonetheless, a subsequent act in 1986 decreed that the deadline for this option was no longer one's eighteenth birthday, but was to be postponed until approval of the forthcoming Nationality Reform Act (which was planned to include dual nationality). Summing up, dual nationality has been allowed since 1986 without restrictions, but the principle was not clearly established until the 1992 act (article 11).¹³ It was established not only by the need to comply with the principle of gender equality, but also to formally allow expatriates and their descendants to couple their Italian nationality with that of the immigration country.

The more relevant element influencing Italian nationality policies in the post-war era is the myth of the Other Italy, a belief that the 'Diaspora'¹⁴ of emigrant descendants mostly includes people who are still culturally close to their homeland.¹⁵ This deeply rooted and largely shared belief inspired the first attempt to reform the 1912 Nationality Law, i.e. Senate Bill no. 991 of 24 February 1960. As the next section shows, the law of 1992 was essentially drawn upon this bill.

3.2 *The 1992 Nationality Law: Untimely reinforcement of jus sanguinis*

When the most important reform of nationality law was passed in 1992, Italy had already become a country of immigration. Two years before, Italian Parliament had passed a fairly progressive law concerning the rights of non-EU immigrants. In spite of this situation, Act no. 91/1992 and the following measures reinforced *jus sanguinis*, in continuity with the traditional co-ethnic principle. The 1992 act seems like a great leap backwards, especially if compared to the 1912 act. According to the law of 1912, all foreign residents had to wait five years to apply for naturalisation (article 4). The only exceptions were the first and second generations of Italians abroad who had lost Italian citizenship and were coming back to Italy, for whom only two years of residence were required (article 9, paragraph 3). By contrast, the 1992 law required ten years of residence for foreigners from non-EU countries, reduced to four for EU countries and five for refugees (article 9). Foreigners of Italian origin (not just the first generation and their children, but also the third generation) could count on a special discount; for them, three years of residence would suffice (article 9, paragraph a), and only two if the period of residence occurs when the co-ethnic foreigner is still a minor (article 4, paragraph c).¹⁶ Last but not least, not only did the new law clearly establish dual nationality but also, following the 1912 law, confirmed the very loose requirements in regard to acquisition of nationality by marriage (article 5).

The act of 1992 introduced a programme allowing people who had lost their Italian nationality (for instance, by voluntarily opting for another nationality) to reacquire Italian citizenship. The window was due to stay open until 1994, but the deadline was extended to 1995, and then to 1997. The Italian Foreign Office reports that 163,756 persons have reacquired Italian nationality by taking advantage of this very easy procedure. This measure was extended (statute no. 379, 14 December 2000) to aliens of Italian descent living in territories that belonged to the Austro-Hungarian Empire before the end of World War I¹⁷ and then became part of the former Yugoslavia after World War II. This provision allowed people to acquire Italian citizenship by means of a simple declaration, even if they were living in a country other than Italy. This second window of opportunity was due to stay open for five years. Under a new provision (no. 124, 8 March 2006), it was reopened without a time limit, though the requirement of knowing the Italian language and maintaining ties with Italian culture was introduced.¹⁸ By contrast, up until now, no requirement has been introduced for the transmission of nationality by descent abroad. According to 2008 data, the number of Italians presently listed in the Register of Italians Resident Abroad (Anagrafe degli Italiani Residenti all'Estero, AIRE) is 3,734,428.¹⁹ However, it is important not to overlook the number of 'latent Italians'. The *oriundi*, as they are known, are people of Italian origin

currently estimated to be some 60 million. Between 1998 and 2007 alone, nearly 800,000 persons 'remembered' to be Italian, thus requesting an Italian passport even if mainly in order to travel visa-free from South America to Europe and North America.

Exploring the reasons behind this 'great leap backward' will enable us to identify some general features of the Italian decision-making process that affect immigration and immigrant integration policies, together with some specific features of the nationality policies sub-sector.

The 1992 law was in fact a delayed-action provision. As anticipated, the first reform project was presented in 1960, in a completely different context, but did not get passed until 1992. Even though approved unanimously, it was already considered out of date by many progressive members of Parliament because it did not take into account the fact that Italy had become a country of immigration. The instability of Italian governments is one of the reasons for the delay. Between the first bill's presentation in 1960 and the approval of the law in 1992, Italy went through 32 governments, with long intervals in between due to the difficulties in forming them. With economic crises and political tensions, reform of the nationality law was not high on the parliamentary agenda. Governmental instability and priorities linked to a persistent state of political and economic emergency help explain the delayed action of this legislation.

Another general feature of the Italian decision-making system in the past can help us understand the large consensus achieved by the reform. At that time, the highly fragmented, polarised party system (Sartori 1976) was counterbalanced by a consensual style of decision-making (Graziano 2002). Many provisions were passed by large parliamentary majorities, i.e. with the consent of the left-wing opposition (Cazzola 1974). The unanimous vote for the 1992 provision was no striking exception.

The consensual measure of 1992 thus arose from the Italian party system at the time. However, it was primarily the consequence of a specific cultural framework concerning Italian expatriates: namely, a persisting myth destined to last (albeit in attenuated forms) through to the present day, not least abetted by pressure from associations of people of Italian origin.

3.3 *Developments up until 2010*

The second part of 2009 presented an important novelty: a bipartisan liberal proposal for reform (Sarubbi-Granata Bill, document no. 2670, Chamber of Deputies) and the opening of an incandescent debate on the issue. Though in some European countries, restrictive measures concerning nationality were passed by centre-left parties in government, no liberal measures were proposed or, for that matter, backed by any right-wing component in defiance of their party or party coalition, as had occurred in Italy. Until then, Italian nationality reform bills showed the classic divide

between a more generous centre-left and a more severe centre-right – although both of them still displayed unanimous consensus in favour of foreigners of Italian origins.

An overview of the bills presented during the fifteenth and sixteenth legislatures of the Italian Republic highlights two different approaches to the issue of citizenship by the centre-left (in power during the fifteenth) and by the centre-right one (in power during the sixteenth).

The centre-left coalition pursued a ‘balanced policy’. On the one hand, it aimed to reduce to five years the length-of-residence requirement for non-EU immigrants to acquire citizenship and to simplify the acquisition of nationality for minors born and/or educated in Italy. On the other hand, it intended to strengthen the requirements concerning civic and social integration and loyalty, very much in tune with Europe’s present reform trend. The bill that then Minister of Interior Giuliano Amato presented in August 2006 was based on a comparative document prepared by an expert. The formal consolidated draft of the law, prepared by the Commission of Constitutional Affairs, which was responsible for discussing a possible reform, virtually reproduced the Amato Bill. That bill, in turn, reproduced to a large extent a proposal elaborated in 1999 by erstwhile centre-left Minister of Social Affairs Livia Turco. This, too, was the result of comparative analysis by experts and the legal office of the department. Visible here is a general tendency by centre-left policymakers to rely on independent experts and top-level civil servants, while centre-right politicians tend to rely more on party staff.

The Amato Bill incorporated measures that should have attracted the support of parts of the centre-right opposition, such as requirements regarding language competence and sharing common values. Nonetheless, much of the opposition used refusal of the Amato Bill as a way to increase popular consensus and to reinforce the strategic alliance between Berlusconi’s Forward Italy Party and Bossi’s anti-immigrant Northern League. The only identical measure shared by the two coalitions was aimed at discouraging marriages of convenience by increasing the requisite number of years of marriage to apply for nationality (from six months to two years if resident in Italy). This restriction on acquisition through marriage was eventually included in the 2009 centre-right Act (no. 94, 15 July 2009) on Public Security.

Unlike the ‘balanced policy’ pursued by the centre-left coalition, none of the bills presented by the centre-right coalition in the Sixteenth Legislature allowed for reduction of the residence requirement. They all maintained ten years for non-EU citizens, as did the consolidated draft of a law, which all-encompassingly embraced a severe stance, for instance, by making integration course attendance compulsory. As already alluded to, this Parliament presented a striking novelty. Gianfranco Fini, the influential leader and co-founder of the centre-right People of Freedom Party (Popolo

della Libertà, PdL),²⁰ which had expressed pro-immigrant proposals in the past, accentuated this attitude as part of his greater strategy to come across as a moderate. Fini's ways have aggregated and reoriented a section of the centre-right ruling coalition to allow a reformist bipartisan alignment. This section eventually produced a bill identical to the previous centre-left consolidated draft alongside an even more generous evaluation of the requisite time: five years, which also counted time granted by stay permits rather than just formal residence.

Fini's move demonstrates that the issues of immigration and immigrant rights can be used to reposition parties and their leaders not just in a more conservative direction, as is happening to many European leftist parties, but also in a more moderate one. Furthermore, they can be used not just to increase electoral chances, but also to strengthen present or future coalitional potential. By the end of 2009, the Fini tactic had transformed nationality into a very hot political issue, albeit forcing the discussion to be shelved until after the 2010 regional election. The logic was that this would allow parties – and, particularly, party factions within the centre-right – to reach an agreement, or at least to avoid revealing open divisions during the electoral campaign. By the end of 2010, deep divergences between Berlusconi's and Fini's faction resulted in a breakdown of the old centre-right coalition and possibly put a halt to bipartisan liberal reform.

It is important to underscore how co-ethnic-oriented acts no. 91 from 1992 and no. 379 from 2000 were, by contrast, passed by a centre-left government. Moreover, the 2001 and 2006 provisions, voted on under centre-right governments and also inspired by co-ethnic attitudes, were all passed unanimously. Parliament could easily pass the constitutional reforms allowing Italians abroad to elect their own representatives to the Senate and the Chamber of Deputies.²¹ While it is not particularly surprising to find a co-ethnic attitude within a centre-right coalition, it is slightly more surprising to find acceptance of this principle by a centre-left majority. Nevertheless, because past Italian emigrants were and are viewed as deserving poor workers, left-wing sympathies for them are less surprising. The same syndrome is shared by Spanish leftist parties.

It is more complex to explain the fact that the centre-left cooled down over citizenship rights for non-EU immigrants during its time in power. To try to understand this behaviour, we need to illustrate another very relevant specific feature of Italian immigration and immigrant-related policymaking. Among the informal actors taking part in the decision-making process concerning immigration and immigrants' rights, a crucial role has been played by the advocacy coalition in favour of immigrants (Zincone 2006b, 2010; Basili & Zincone 2009, 2010). The coalition is made up of various associations, Catholic organisations being prominent among them.²² This 'strong lobby for the weaker strata' mainly focuses its attention on the sectors of immigrants in the most disadvantaged conditions – i.e. undocumented

immigrants – and on claiming basic rights for these people (amnesties and access to the national health service and public education). Commitment to political and citizenship rights for long-term residents is less tenacious. This lobby, together with another powerful one – that of employers' associations – also pushes for another goal: the expansion of legal immigrant flows. Both aims support even more than granting immigrants the right to vote locally or to facilitate their access to nationality. The power of these two lobbies, especially before the economic crisis beginning in the late 2000s, was reinforced by the objective need for manpower, due to the stagnant Italian demography, its aging population and the reluctance of Italian workers to accept unattractive jobs. In addition, the lack of social services for the elderly attracted private caregivers and positioned Italian families in favour of expanding inflows and regularising undocumented domestic help.

As demonstrated in several polls (Ispo-Commissione per le politiche di integrazione degli immigrati 1999, 2000), Italian public opinion was in favour of reducing new entries or stopping them altogether, but combined pressure from the objective demands of the labour market and powerful actors made these demands impossible to fulfil. Other insistences by the public, such as the prevention of illegal immigration and the expulsion of foreign lawbreakers, have been very difficult to accommodate. Requests of this kind are hard to comply with in any country, though particularly in Italy.²³ The centre-right's hostility towards liberalising nationality law and the centre-left's option not to insist on pursuing citizenship rights for immigrants (i.e. nationality and local vote) can be interpreted as a sort of surrogate response to the impossibility of fulfilling the public's demands, which remained visible in the period leading up to the 2000-2001 elections. This was due to the well-known 'electoral panic', the politicians' proclivity to give up measures deemed risky simply because they are unpalatable to voters. Since the requisite anti-immigrant measures were not easily enforceable, any pro-immigrant proposal also had to be dismissed by centre-left contenders.

Nonetheless, electoral panic is not a chronic disease. During the 2005 regional campaign and 2006 general election campaign, the centre-left – then in the opposition – promised to reform nationality law and to grant local voting rights, since it was nurturing the hope of enjoying a fairly large advantage over the centre-right. Electoral panic and a consequent relinquishing of traditional party values are less likely to occur when parties or cartels expect a comfortable victory. The results of the 2006 national elections largely frustrated such an expectation, since the centre-left cartel won with a very slim margin. The centre-left came up with a nationality reform project based on the aforementioned Amato Bill that became known as the Bressa Text, named after the erstwhile rapporteur. Nonetheless, after losing a large share of public support, the coalition seemed tempted to abandon

the project. On the eve of a partial local election in May 2007, the president of the Constitutional Affairs Commission in the Chamber of Deputies announced the decision to suspend the transfer of the draft law to the floor, in order to better understand the costs involved. In the same way, the parliamentary passage was suspended in order to discuss the 2007 Financial Law. Once again, the fear of engaging a fragile majority in a tough parliamentary battle produced a false substitute: to please a public that was fearful of excessive inflows and immigrant criminality, the centre-left abandoned the nationality reform that, if properly explained, would probably have been accepted. The dramatic campaign pegged many members of the present centre-right majority against immigrant rights. Their vocal refusal of the bipartisan proposal may have negatively impacted Italian society, once very concerned about immigration though not hostile enough to deny immigrant rights. Surveys from 2008-2009 have confirmed a particularly strong concern in Italian public discourse, compared with other EU countries. The reasons for concern are the quantity of inflows and the fact that they are irregular, together with a deep fear of criminality arising from immigrant origins (Transatlantic Trends Immigration 2008, 2009). Recent surveys concerning nationality produce contradictory answers. Some results show reluctance towards a liberal reform (IPR 2009), except concerning minors – such public sympathy may lead to a partial reform benefiting minors.

Public opinion is a relevant actor in policymaking indeed. But surveys are not always accurate reflections: results change depending on how questions are formulated. For example, in surveys regarding nationality reforms, favourable results emerged when immigrants were defined as being documented and taxpaying (Demos 2007). Meanwhile, people's reluctance to reduce requisite residence time was expressed when the present ten-year requirement was mentioned (IPR 2009). Polls are not just instruments for surveying public opinion; they are also used by the political elite to influence the electorate, to present a false consensus that can actually be made real by evincing a 'jumping on the bandwagon' mentality. Thus, even when surveys do not reflect real opinions because they are steered by partisan polls agencies, they remain capable of playing a role in policymaking.

4 Immigration and immigrants' rights: An ongoing policymaking process

4.1 *Immigration policies begin: Italy's first relevant immigration law in 1986 and the Martelli Law of the 1990s*

Policymakers' prevailing conceptualisation of Italian emigrants as people leaving their country in search of work (Colombo & Sciortino 2004c) influenced the initial measures concerning legal treatment of immigrants.

The first relevant law (no. 943, 30 December 1986) addressed immigrants as foreign workers, starting with its very title: 'Norms in the matter of placement and treatment of non-EU workers and against clandestine immigration'. Important responsibilities were therefore assigned to the Ministries of Labour and of Foreign Affairs. The latter set up a committee aimed at regulating flows, controlling illegal immigration and combating trafficking. The committee was composed of representatives of the Ministries of Foreign Affairs, of Labour and of Interior, as well as unions and employers' associations. The role assigned to the social partners reflected the general neo-corporatist model that characterised Italian decision-making in the field of labour at that time. Decision-making regarding immigration and immigrant rights appears embedded in the general decision-making structure and style of political systems – Italy's included – and it reflects the changes occurring within it.

The Ministry of Labour also hosted a consultative committee that included representatives of immigrants' associations together with representatives of unions, employers' organisations and local administrations. The attempt to stay in favour with immigrant organisations resulted in too many immigrants' representatives being included. As a result, the committee grew to an unmanageable size and ended up being disbanded three years later. Like other bodies intending to represent immigrants, this committee proved to be irrelevant in the actual decision-making process (Zincone 1998). It was the aforementioned advocacy coalition comprising Catholic and lay associations – from unions often in accord with employers – that acted on behalf of immigrant interests, effectively playing the role of their indirect representative (Zincone 2000).

Because immigrants were thought of as workers, the political goal of avoiding competition with the Italian workforce was pursued through various means. Priority in employment was openly given to Italian and EU workers (article 8), and immigrant flows were, in principle, limited and planned (article 5). Non-EU workers were given the same rights as nationals as far as most welfare entitlements were concerned (article 1). The cost of social security contributions for non-EU workers (article 13) was made 0.5 per cent higher than that of national workers – this in order to provide resources for repatriation in case of dismissal. Making social security contributions for immigrant workers more expensive than for native ones was also a device to make foreign labour economically less attractive and competitive. Granting equality in terms of social rights, the 1986 law not only acted in line with a 1975 ILO Convention (no. 143) that Italy had ratified in 1981 (Nascimbene 1991), but tried to avoid a downward competition that would be detrimental for Italian labour.

Overall, the 1986 legislation looked extremely generous, liberal and in tune with international law. In theory, immigrants were not only made virtually equal to Italians as far as welfare provisions were concerned, but

were also given special opportunities to learn Italian while letting second generations preserve their country of origin's culture and language (article 9). In practice, no national public funds were devoted to non-contributory welfare and integration measures, and the burden of implementing these rights mainly rebounded on the already overstretched resources of regional and city councils. At that time, Italian regions still had very limited fiscal autonomy and financial resources.

The scarcity of planned inflows, the higher costs and, to an even greater degree, the complexity of the procedures were real deterrents for employers who intended to hire non-EU workers legally. It was easier to hire illegal immigrants informally, without registering them. Thus, the 1986 law actually reinforced the factors that gave rise to undocumented residence. At the same time, it introduced the first consistent amnesty for undocumented immigrant workers. Many others would follow. These measures can be better understood when observed as being embedded in a general policy style: amnesties for unauthorised building, tax evasion and unregistered labour – and even general pardons – are far too frequent in Italy.

Since this specific regularisation was made dependent on the requirement of being a registered employee, it was an out-and-out flop.²⁴ The failure and its subsequent negative feedback produced a sort of vicious learning cycle: the low numbers of the 1986 regularisation influenced the law that followed in 1990 (no. 39, 28 February). The amnesty accompanying that 1990 law was based on extremely loose criteria and was followed by an even looser implementation. Generally speaking, negative feedback from past policies is a recurrent factor motivating policy reforms in the field of immigration control and integration. We could call into question the very possibility of fully successful integration strategies and fully successful policies aimed at controlling the inflows. A sort of inevitable negative feedback would explain the unending process of policy reforms in this field – not only in Italy.

Another recurrent driving factor of public policies is the 'emergency': the presence of events that are difficult to forecast and manage, thus being perceived and presented as emergencies. By the end of the 1980s, the growing settlement of immigrants began to produce social tensions, especially in large cities and southern agricultural areas. Lack of accommodation led to uncontrolled squatting and, in turn, protests by residents in surrounding areas and even acts of aggression by right-wing youngsters. This difficult situation peaked when a black labourer named Jerry Essan Masslo was murdered in October 1989 in Villa Literno, a tomato-farming area near Naples. The 1990 law followed immediately after the Masslo murder. Italian lawmaking in the field of immigration and the treatment of immigrants has too often been characterised by an 'emergency response' attitude, erroneously suggesting that Italian immigration was neither a stable

nor inevitable process (Bolaffi 1996).²⁵ In the Masslo case, a shocking event was used as an opportunity to propose positive reforms.

The Martelli Law of 1990, named after erstwhile Vice-President of the Council of Ministers, confirmed equal access to social rights though, like the 1986 law, allocated little money for this aim. The financial burden for immigrants' welfare was still borne by local shoulders. One important exception was temporary accommodation, for which resources were given top-down from the central government to the regions, which, in turn, transferred them to local administrations. Even before the assignment of specific resources, some efficient local administrations had started temporary accommodation programmes (Ponzo 2005). Here, we see how solutions often move bottom-up – from the periphery, where the problems must be faced, to the centre, which is often more concerned with public rhetoric and general policy lines. In theory, the 1990 law paved the way for further planned immigration by making annual flow decrees mandatory and imposing 30 October as a deadline for issuing the decree (article 2). In practice, the decrees were issued at the end of the years whose inflows they were supposed to regulate up until 1998, and a large quota of the planned flows were taken up by *de facto* amnesties, family reunions and permits for humanitarian reasons. Again, this shows a case of discrepancy between the letter of the law and its actual implementation. As a key interviewee stated, the discrepancy should not be despised; it helps manage the system by allowing legislation to adjust to actual needs.

The 1990 law assigned the responsibility of coordinating planned annual inflows to the Ministry of Interior, together with the Ministries of Foreign Affairs, of Budget and of Economic Planning, Labour and Social Security. These ministries were also supposed to consult others involved, such as the Ministries of Public Health and of Education, as well as the main unions, the National Council of Economy and Labour and the Conference of the Regions. The system was more or less the same as provided by the 1986 law, with slightly more influence given to the regions. Another characteristic of Italian decision-making emerges here: too many actors involved in too many acts requiring excessive transfers of paperwork, back and forth from one ministry or department to another. Once again, this leads to another discrepancy between the letter of the law and what is put into practice. Decisions are actually made by a far more limited number of actors and, as a consequence, the formal actors excluded by the real decision-making process take offence.

The Communist Party, then the main component of the opposition, voted in favour of the 1990 law. By contrast, a small party belonging to the Republican majority coalition and its secretary Giorgio La Malfa were highly critical (Ciccarelli 2006). They eventually voted against the law, together with Parliament's right wing comprising the National Alliance and the Northern League. As far as immigrants and immigration lawmaking

were concerned, this pattern persisted up until the current government. The majority could be split, while part of the opposition could converge with the majority. Though the 1990 act divided the parties in government, it was approved by a huge majority (over 90 per cent of MPs). Nonetheless, that kind of virtual unanimity was not destined to last. In the latter half of the 1990s, immigration and immigrant rights became – far before nationality matters – a highly politicised, conflict-ridden matter.

4.2 *The 1990s: Towards the Turco-Napolitano Law of 1998*

The political crisis in Albania and the consequently massive inflows of Albanian refugees to Italy presented another emergency situation. Combined with a general need to improve coordination in policymaking, it motivated Prime Minister Giulio Andreotti to introduce a Ministry for Italians Abroad and Immigration during his seventh government (April 1991–April 1992). The decision on this group in the ministry was made with an eye to domestic politics – to avoid the impression of giving immigrants ‘too much’, as was reported by erstwhile Italians Abroad Minister Margherita Boniver. As the former president of the Chamber of Deputies’ Commission for Human Rights and founder of the Italian branch of Amnesty International, Boniver was deeply concerned about the rights of immigrants. The decision to introduce a Ministry of Immigration was also the result of ‘a policy transfer from abroad’ conveyed by experts and civil servants (Zincone 2006b). This again is a recurrent practice, not confined to immigration matters. Guido Bolaffi was a long-time top civil servant working in the field of immigration, and he played an important role in the institutional building of the ministry. Nonetheless, the Ministry of Italians Abroad and Immigration had no portfolio and was always overwhelmed by more powerful competing ministries and their departments, so this ad hoc ministry ended up not being very successful.

Various other attempts to coordinate and clarify the institutional attribution of responsibilities failed, and eventually, in 1993 (Law no. 107, 13 April), a special autonomous Department of Social Affairs within the Presidency of the Council (again a ministry without a portfolio) took control of this policy sector. At the time, the appointed minister was Fernanda Contri, again assisted by Bolaffi. A special General Direction on Immigration was then established in the department. Under this minister, a first draft of the major reform of the legal status of immigrants in Italy was prepared with the help of a commission including experts and top-level civil servants from the main ministries. The cases of Boniver, Contri and, later, Turco confirm the hypothesis that newly appointed ministers are more likely to resort to the help of top-level civil servants and experts (Penninx, Garcés-Mascareñas & Scholten 2004; Widgren & Hammar 2004). Even an experienced politician like Giorgio Napolitano (2006: 294)

writes in his memoirs that when he became Minister of the Interior in 1996, he brought with him 'a trustworthy expert in international relations and immigration' – namely, Carlo Guelfi.

After the first Berlusconi government's brief centre-right governance during 1994-1995, part of the proposals of 1994's so-called Contri Draft were included in a decree (no. 489/95) named after erstwhile Prime Minister Lamberto Dini. Besides allowing another amnesty, the so-called Dini Decree granted most public health services (article 13) to undocumented immigrants. Extending public health to undocumented immigrants had previously come from the benevolent illegal practices of hospital directors and doctors, who were able to administer medical attention to immigrants by disguising hospital visits as emergency treatments for which everyone is eligible, no questions asked.

In a way, the Dini provision was forced by the 1992 General Reform of Public Health (government decree under Parliament delegation 502, 30 December), which introduced tight budget constraints and a business-oriented approach, making it difficult to conceal and cover expenses for users who were not entitled. Another measure provided for in the Immigration Law of 1998 originated from illegal local initiatives: the inclusion of undocumented minors in public schools. Under pressure from the advocacy coalition at both the local and national levels, the practice was first embodied in local memoranda, then in ministerial memoranda and eventually in the Turco-Napolitano Law.

Here, it is evident that legislative initiative can be taken bottom-up from the periphery to the centre, from informal to formal actors, from civil society to the public arena. It can shift from illegal practices to soft law, from soft law to decrees and eventually to laws (Zincone 2006b). Although a law textbook would never include the concept of practices in opposition to the law, such practices are not uncommon and quite effective.

The 1998 law can be considered the first reform regarding immigration and immigrants' rights that was not conceived under emergency conditions. It intended to treat immigration as a permanent phenomenon and regulate the subject with a comprehensive act. New Minister of Social Affairs Livia Turco and new Minister of Interior Giorgio Napolitano used the 1994 Contri Draft as their starting-off point and relied upon more or less the same team of experts and civil servants. Although the draft was radically transformed, the prevailing attitude of solidarity combined with legality-oriented measures did not change.

Even though amended by centre-right governments in 2002 and 2008, the Turco-Napolitano Act (no. 40, then Consolidated Act no. 286/1998) is, to date, the main piece of legislation concerning the status of immigrants in Italy. The law addressed legal immigrants as individuals and potential citizens, not just workers, and made them nearly equal to nationals as far as all social rights were concerned (article 41). This virtual equalisation of

rights was not a novelty. At last, valuable financial resources were committed to this set of policies, with the establishment of the National Fund for Migration Policies (Fondo Nazionale per le Politiche Migratorie) (article 45). Furthermore, as already mentioned, the law definitively opened up public education (article 38, paragraph 1) and a large part of public health care to undocumented immigrants (article 35, paragraph 3). This set of solidarity-oriented measures, already introduced in part by the 1995 Dini Decree, was mainly the outcome of ongoing pressure from the pro-immigrant advocacy coalition. Thanks to this primarily Catholic coalition, as well as the work of experts and top-level civil servants called upon by newly appointed Minister Turco, a residence permit for job-seeking immigrants was also introduced (article 23).

Nonetheless, while the 1998 law was strongly influenced by the advocacy coalition's solidarity-oriented attitudes, it also introduced new repressive measures. In order to be admitted to the Schengen Area, the Italian government had promised not only to adopt the Schengen Information System (SIS), but also to reinforce border controls against illegal immigration. The repressive measures introduced in 1998 were mostly motivated by a necessity to respond to the international constraints of Schengen and explicit pressures from EU member states. The need to comply with EU requirements was keenly felt by Minister of Interior Napolitano. This prominent figure in the former Italian Communist Party, a convinced pro-European and a reformist, was highly concerned with the duties connected to his new appointment. To have Italy accepted as part of the Schengen Area, the minister had to trump strong resistance from his German colleague, while counting on the support of his Spanish counterpart.²⁶ Furthermore, repression of illegal entries served as a bargaining tool that could be used to convince the opposition to avoid filibustering, particularly feared since the centre-left could only count on a narrow majority. The most significant repressive measures consisted of the possibility of holding undocumented immigrants in special 'temporary detention centres' for up to 30 days (article 14) in order to identify and possibly repatriate them. Various forms of forced expulsion were also introduced as an administrative measure (article 13) for reasons of public order and by court decision as an alternative (article 16) or subsidiary penalty (article 15). These repressive measures were disputed by the left wing of the majority (Basili 2005a; Zincone 2006b), and somehow balanced the Council of Ministers' approval of more timely and generous inflow decrees.²⁷ On the eve of the regional election of 2000 and the political election of 2001, the centre-left government became afflicted by the electoral panic syndrome surrounding the discussion on nationality law. The government thus decided to limit a number of social rights to long-term resident immigrants only,²⁸ while making the acquisition of a permanent permit more difficult²⁹ (Zincone 2006b).

More than other previous public decisions, the process leading to the 1998 law highlighted the fact that immigrants and immigration policies are divisive issues, not only between party coalitions, but also within coalitions and even the same party.

4.3 *After 1998: Reforms of the reform embedded in an evolving political system*

By late 1999, once again many different ministries were involved in policymaking on immigration-related issues. To simplify the procedure and coordinate the various offices and ministries, a permanent roundtable was set up, hosted by the Presidency of the Council. This can be considered a specific institutional innovation. Nevertheless, the formal structure of immigrant and immigration policymaking was to be affected by more significant changes: general reforms concerning the introduction of a spoils-system approach in public administration, the transfer of responsibilities from the central government to local government, new electoral laws and the increased power of the government vis-à-vis Parliament.

The status of very top-level public managers was affected by a series of public administration reforms. In particular, after the acts of 2001 and 2002, their contracts were no longer permanent and their employment became dependent on the will of the minister. The introduction of this kind of moderate spoils system reduced the role of civil servants in policymaking, albeit to a lesser extent than one would have expected. Newly appointed ministers, at least in strong, traditional departments such as the Ministries of Interior and of Foreign Affairs, still tended to rely on the existing staff instead of employing their own personnel.

General reforms to restructure public administration, most of which passed in 1999 (Law no. 300), also set in motion a process of functional reorganisation and gave rise to many changes both within the ministries and between them, eventually reducing their number. In 1999, the Ministry of Foreign Affairs took this opportunity to replace the General Department for Emigration and Social Affairs with a new Department for Policies and Italians Abroad, though it did not go into effect until 2002. In 2001, an administrative reform was also implemented in the Ministry of Interior. Responsibilities for immigration and immigrants previously shared between the Ministry of Interior and the two General Divisions for Police and Civil Rights (the latter addressing only asylum seekers) were brought together in the Department for Civil Liberties and Immigration.

The 1999 reform of public administration also merged various ministries when it was implemented in 2001. The Ministry of Labour and Social Security incorporated the Department of Social Affairs and became the Ministry of Welfare, which inherited the Special Immigration Division. Nonetheless, Minister of Interior Roberto Maroni, a member of the

Northern League, feared being involved in the integration of immigrants. Because at that time his more moderate personal opinions were at risk of conflicting with those of his party, he allowed a shift of responsibilities from the Ministry of Welfare to Interior, also in matters previously dealt with by Social Affairs.³⁰ Under the third Berlusconi government,³¹ thanks to the appointment of Giuseppe Pisanu, the Ministry of Interior took the lead not only in combating illegal entry and crime, but also in the field of integration policies. Since these were highly controversial issues, Pisanu was sometimes opposed by fellow coalition members disagreeing with his sensible attitude towards immigration and immigrants' rights. Individuals do matter, and Pisanu's role increased during his mandate, above all due to the personal prestige the minister enjoyed within the cabinet. Prestige and competence, however, did not prevent Pisanu's exclusion from the government when Berlusconi came back to power in 2008. Maroni was then appointed Minister of Interior, his policy attitudes becoming increasingly embedded in the anti-immigrant line of his party.

As already observed, the creation and form that immigration-related policies take are influenced by the general shape of the country's institutions and their reform. These remarks apply not only to public administration, but also to other sets of reforms – and their actual capacity to achieve the aim for which they were conceived.

Since the beginning of the 1990s, various reforms of electoral laws at different levels³² have attempted to produce more stable governmental majorities and grant more power to the executive.³³ Up until the results of the 2008 elections, though the average duration of Italian governments had lengthened, the number of parties had not diminished. Part of the seats are still assigned through the proportional method, enabling small parties to survive if they succeed in passing a threshold of 4 per cent on the national level (Chamber of Deputies) and 8 per cent on the regional level (Senate). Without the need to reach a minimum threshold, the winning coalitions receive a majority reward at the two respective levels. What is more relevant when it comes to accounting for Italian immigration and immigrant policies is the way in which this sort of system actually operates. Parties form cartels that designate common premier candidates. In the Chamber of Deputies, the party list system operates. In both houses, candidates of parties and party factions are given 'safer' constituencies according to the electoral strength and coalition potential of their groups (the latter depending on how pivotal they are in enabling the coalition to win). Up until 2008, the system was not able to discourage the proliferation of parties but, since it rewarded electoral coalitions, forced parties to form often heterogeneous electoral cartels. As a consequence, ideological conflict within party coalitions increased. This syndrome, already present during the making of the 1998 law, grew more acute during the preparation and approval of the 2002 'reform of the reform'.

The 2002 centre-right reform was a sort of electoral bill of exchange that centre-right parties were obliged to honour. While the centre-right was still in the opposition, it had presented two main bills that provided the political basis for the laws to be voted on once it came to power. The first was the Bossi-Berlusconi Bill, named for the leader of the Northern League and the centre-right candidate premier. The reform project took the form of a people's bill, which to be accepted needs 50,000 signatures – these were collected on the eve of the 2000 regional elections. The cultural framework of the bill was utilitarian and functionalist. It considered immigrants as guest workers, a flexible production factor rather than a potential part of the permanent population. The most relevant features of the bill were the increase to a three-year legal residence requirement before being entitled to family reunification and preservation of the ten-year period of residence before non-EU citizens could apply for naturalisation.

A 'law and order' approach characterised the other major bill, which was promoted by the National Alliance, another centre-right party. This bill introduced the crime of clandestine immigration for illegal immigrants, thus implying immediate arrest, a summary trial and escort to the border. In contrast to centre-left policymakers who tend to rely on experts and civil servants, at least during preparation of the aforementioned bills and the 2002 reform, centre-right policymakers made use mainly of their parties' staff to keep a stronghold on consensus-driven policy strategy. However, some of the more radical changes called for by both bills, conceived when the centre-right was in the opposition, were toned down during the bargaining that preceded official presentation of the 2002 reform, when the coalition came to power. In the actual Bossi-Fini Bill, no crime of clandestine immigration or restrictive reform of nationality law was introduced, and family reunion stayed immediate for holders of renewable residence permits of at least one year. This more moderate approach was the consequence of a strong opposition made by the centrist Catholic component of the majority. Nonetheless, the clash between government and opposition was much fiercer than when the centre-left reform was debated (Basili 2005a).

Comparative analysis of parliamentary proceedings during the formation of the two main laws voted by the centre-left in 1998 and the centre-right in 2002 clearly shows not only rhetorical and ideological conflicts between centre-left and centre-right, but also vast political conflicts within both coalitions (Basili 2005a; Zincone 2006b; Zincone 2002; Zincone & Di Gregorio 2002) – the conflict within the centre-right being even deeper. Both provisions were the result of compromises that took place mainly between government and its opposition in 1998, and mainly within the majority in 2002. The centre-right could rely upon a large majority, which allowed it to withhold from making any concessions to the opposition. Nevertheless, a heterogeneous majority must find a compromise among its different components if no alternative partners are available. The radical

Northern League was forced to make major concessions to its Catholic partners.

The 2002 Bossi-Fini reform did not encroach on any social rights given by the centre-left to documented or undocumented immigrants. In fact, as far as social rights were concerned, the centre-right reform (Law 189/2002) altered the centre-left policies far less than expected. The only real welfare change introduced by the new law concerned pensions, which was unsubstantial.³⁴ Moreover, the 2002 law included another amnesty addressing domestic workers and caregivers (article 33). The coalition's right wing had to accept this measure because of pressure from families³⁵ as well as from small entrepreneurs who were, in principle, hostile to irregular immigration and subsequent amnesties, though strongly in favour of regularising their own undocumented employees. The law was immediately followed by another amnesty provision (Decree 195/2002) that included all immigrant workers, for which employers (largely centre-right voters) were successful in lobbying. The cumulative outcome of the two amnesties produced the largest regularisation to have ever occurred in Europe up until that time (634,728 individuals).

Parties and factions within the same coalition that were characterised by opposing attitudes inevitably produced a patchwork legislation. The presence of the same social actors and lobbies, the ubiquitous positioning of Catholic pro-immigrant parties in both majorities and the persistence of similar problems reduced potential divergences between centre-right and centre-left coalitions, even in such a divisive policy sector. The longer the new centre-right government stayed in power, the more it was forced to converge with the previous centre-left majority. While planned flows were considerably reduced at the beginning of the centre-right's mandate,³⁶ they increased enormously in the following years. This culminated in the Prime Minister's Decree of 15 February 2006, when 170,000 non-EU workers and another 170,000 workers from new EU member states (for which Italy applied a two-plus-three-year moratorium) were allowed to enter.³⁷

The opposing coalitions' policies converged but did not overlap. The 2002 reform introduced more restrictive provisions on immigration policy. The link between residence permit and employment was tightened. The new law introduced a staying contract for the purpose of employment, the *Contratto di Soggiorno-Lavoro* (article 6 of 189/2002 Act). Subsequently, it abolished the jobseekers' stay permit (article 19, paragraph 1) and reduced the period of tolerated unemployment from twelve to six months (article 18, paragraph 11). It required more frequent renewal of residence permits and reduced the length of the permit for temporary jobs (article 5, paragraph 1).³⁸ The 2002 centre-right reform also introduced two repressive norms that proved to be legally debatable: with the first (article 13, paragraph 5bis), undocumented immigrants could be forcibly escorted to the border and expelled; with the second offence (article 14, paragraph

5ter), if stopped a second time without a stay permit, illegal immigrants could be submitted to mandatory imprisonment (from six to twelve months in the case of a second violation of the entry and stay laws; from one to four years in the case of a third violation).

These residual but still significant differences between centre-left and centre-right policies were partially eroded by two factors: the actions of various courts and the Constitutional Court, which blocked repressive measures or obliged the government to amend them, and the practical difficulties caused by frequent renewal rules and short-term permits.

The Italian legal system is characterised by a rigid Constitution and constitutional review by a Constitutional Court. Rulings by the Supreme Court have to be initiated by law courts or appeal courts during specific trials. Over a thousand constitutional objections were submitted to the Supreme Court against the repressive measures of 2002, leading to two rulings that eliminated parts of the Bossi-Fini Law. The two judgments (222 and 223, 15 July 2004) ruled that mandatory preventive imprisonment of a person who fails to comply with an order to leave the country after being found without a residence permit or with an expired permit is unconstitutional, since a person cannot be deprived of his freedom for a mere administrative offence, for which, in case of conviction, a short prison term is provided. Arrest and immediate escort to the border by means of a simple endorsement by a judge, without any hearing and opportunity for defence, were ruled unconstitutional as well.

While the repressive side of the law was partially eroded by the action of the magistracy, the functionalist side was partially amended because it proved to be dysfunctional. The complicated procedure of the labour-residence contract and too frequent renewals caused blockages, huge delays and various other problems for immigrants and their employers. Making use of innovative practices initiated at a local level (Caponio 2006: 278) – within the framework of a general Ministry of Interior directive (18 February 2005) aimed at improving the quality of public services – attempts were made to redistribute the burden and outsource responsibility for dealing with the paperwork. Decentralisation to local bodies, civil society associations and, ultimately, post offices³⁹ can be attributed to the image of efficiency being propagated by the centre-right government. Nevertheless, this attempt to delegate and decentralise caused considerable confusion over the responsibility of issuing and renewing permits, making the situation even more chaotic. The subsequent centre-left government opted for an online procedure, but this solution did not prove successful either – the ‘circuits got overloaded’, resulting in the entire system being jammed up. Attempts to delegate outside the public administration and simplify part of the procedures have, up until now, proven ineffective. This is due to the huge number of applications involved and their concentration within a short timeframe. In the autumn of 2008, the main Italian union

CGIL denounced the fact that more than a million old permits still needed to be renewed and part of the 2007 permits had yet to be assigned,⁴⁰ as well as the fact that renewal procedures can take up to one year, meaning the 'renewed' permit often arrives already expired. The Questure, the police headquarters mainly responsible for the renewals, are often understaffed in Northern Italy, precisely where there is an overload of applications. Yet, an uneven, often irrational distribution of administrative resources, which is typical of the Italian system, explains discrepancies and inefficiencies not just when immigrant rights are involved.

As in other countries, local authorities in Italy have always had a considerable say in the everyday management of immigrant policies (Zincone & Caponio 2006). Starting in 1990, a decisive set of reforms gave an even more relevant role to local authorities in immigrant policymaking. Pressure from the Northern League created a new impulse for the constitutional revision of the 'Form of State' (Title V of the Italian Constitution), which had begun with the introduction of regions in 1970. A reform process towards a more federal, decentralised structure of the state has been taking place since 1999. It has already involved a profound redistribution of responsibilities between the central government and the regions, including matters concerning immigrants. Regions were assigned legislative responsibility for public health, housing and large parts of education. Since the first budget law of the 2001 Berlusconi government, the National Fund for Migration Policies and other social funds (including the Fund for Childhood Policies) were merged into a single general Social Fund. Regions became responsible for deciding on the allocation of these resources to the sub-regional local authorities. This decision-making reform was accompanied by a sizable cut to the fund itself, resulting in local governments having to carry a heavier burden for integration.

Developments following the 2006 elections and the return to power of Prodi's centre-left government confirmed the relevance of the policy cycle already observed in the case of the 2001 Berlusconi government. The colour of the party majority is more relevant at the beginning of the mandate, when the ideological framework is stronger. Newly appointed ministers intend to underline discontinuity by keeping the electoral promises. The Prodi government started by accepting all the pending applications for residence and work permits (460,000 non-seasonal and 58,000 seasonal workers) by upping the number of quotas already planned. This move was denounced by the opposition as a surreptitious amnesty, since the applications were submitted by workers who were already illegally residing in Italy. In fact, the use of planned inflows to regularise undocumented immigrants is a common practice under many Italian governments. The centre-left government abolished the moratorium on immigrants coming from new EU member states. The government presented a proposal (Chamber of Deputies Act no. 2976, the so-called Amato-Ferrero Bill) to reintroduce

the sponsor system in an innovative form and to simplify procedures and requirements related to the residence permit and its renewal. The bill also considered the possibility of increasing, in cases of extraordinary labour needs, the quota of entries for wage earners (domestic workers and caregivers, in particular). It planned to extend the residence permit to all victims of new slavery, a measure that was originally introduced in 1998 to help women who were forced into prostitution. Other relevant innovations conceived by the Amato-Ferrero Bill concerned irregular immigrants. Temporary detention centres were to be reorganised in order to separate simple clandestine immigrants and overstayers from presumed criminals, and detainees were to receive more freedom and legal assistance. Regularisation was to take place on an individual basis for irregular immigrants who had a work permit for at least eighteen months, but were unable to renew it because of temporary unemployment. All these measures can be considered counter-reform moves aimed at both re-establishing the old Turco-Napolitano Law adding some innovative features to it. Together with the reform of nationality law, these proposals were blocked by a stalemate in parliamentary activity of the Prodi government. They eventually expired when the government fell.

After the centre-left government collapsed on 24 January 2008, the centre-right coalition came back to power with a large majority. The coalition no longer included the small Catholic Party (UDC). Generally speaking, it had a far less relevant presence of Catholic members and a reinforced Northern League contingency. Since anti-immigrant sentiment was one of the reasons for the centre-right coalition's electoral success, it is not surprising that the first measures on immigration were included in the two Acts on Public Security (125/2008 and 94/2009). Though the government could count in theory on a more homogeneous, large majority, some of its initial, more radical proposals were contested by members of its coalition and even defeated in Parliament. As a result, policymaking was doomed to continuous overhaul, and every step forward was followed by a step back.

For instance, the project to carry out a census of Roma camps and take their children's fingerprints was abandoned, and the census followed a more traditional path.⁴¹ Nonetheless, the question of fingerprints resurfaced in the Ministry of Interior's Directive for the Management of Unaccompanied Romanian Minors (20 January 2009) with the official aim of identifying minors, understandably in order not to lose trace of them. The recurrent rightist proposal to make illegal residence a crime followed a zigzagging path, as well. It was aired, yet then diminished to illegal entry in the draft law presented to the Senate. According to the draft, perpetrators would have been submitted to immediate arrest and from one to four years of imprisonment followed by expulsion. During parliamentary debate, undocumented residence was changed back into a crime, but the fear of overloading already overcrowded prisons made it punishable only by a fine

(from € 5,000 to € 10,000). Downgrading the punishment and making it clear that the removal of an EU citizen must be conducted in conformity with Directive 2004/38/EC⁴² were also consequences of the Ministry of Interior's request for advice from the European Commission. In fact, the European Commission had discouraged the Italian government from widening the cases in point to expel EU citizens other than those foreseen by Directive 2004/38/EC, i.e. individuals who represent a threat to public health and security.

Even more imposing than EU constraints was pressure from the advocacy coalition and human rights organisations. Because of it, the proposal to expel asylum seekers whose application was rejected and who had filed an appeal was modified, and expulsion was confined to cases that were rejected because they were patently ungrounded (in 159/2008, Legislative Decree on Political Asylum). On the other hand, the EU directive approved on 18 June 2008 fixed the maximum time of detention to identify and repatriate undocumented immigrants to six months and, in specific exceptional cases, to eighteen months. In so doing, it offered the Italian government the opportunity to propose one of its more contested measures: increasing the time of detention from two to eighteen months. This measure and the legalisation of voluntary associations of citizens who would patrol the territory were rejected by secret ballot in the Senate and the Chamber of Deputies. The proposal to increase the time of detention for the identification of illegal immigrants was reintroduced in another Public Security Decree (Opposition to Sexual Violence and Stalking, no. 11, 23 February 2009), but this time upped only to six months instead of eighteen. Both this and the voluntary patrolling proposal were rejected once again. When the Security Bill was discussed in the Chamber of Deputies, voluntary patrolling associations and increased time of detention were again reintroduced in the text. In order to get them approved, another anti-immigrant measure was deleted: that according to which doctors were no longer prohibited from denouncing illegal immigrants. This last proposal had provoked strong bipartisan protests by Italian doctors and the Catholic Church. The Security Bill also introducing legal residence as a requirement to access public services and to register marriages, births and deaths would have implied the impossibility for children of undocumented immigrants to attend public schools, and could have possibly compelled teachers to report illegal parents. Pressures from the advocacy coalition and from within the majority managed to secure the right of undocumented children to public education, but if illegal residence was to become a crime, political and legal interpretation suggested that 'spy doctors' and 'spy teachers' were inevitable. Even after this huge bargaining process and extensive reworking of the original project in order to pass the increased time of detention, voluntary patrolling and undocumented stay as a crime, the government asked for a vote of confidence for the Security Bill, thus avoiding another defeat in

Parliament. Even the large, relatively more homogeneous centre-right majority was forced to come to terms with internal dissenters and civil society pressures, and to take into consideration legal and political constraints deriving from Italy's membership in the EU and international organisations.

The Italian Constitution requires that the President of the Republic evaluate all new laws in order to ensure their constitutionality. The President very rarely rejects bills and decrees unless they overtly contradict the Constitution, leaving the task of controversial cases to the Supreme Court. However, he exercises a remarkable power of moral suasion that can prevent legislators from passing laws that go against the Constitution. Italian presidents – current President Giorgio Napolitano, in particular – have exercised moral suasion in matters of immigrant rights as well, asking the government not to resort to law decrees that restrict individual liberties. President of the Chamber of Deputies Fini, a prominent leader of the centre-right coalition and the recently born PdL, did not only promote extending citizenship rights to long-term resident immigrants (such as the local vote and easier access to nationality for them and their children), but also played an important role in combating radical anti-immigrant measures, particularly those aimed at depriving undocumented immigrants of fundamental rights such as public health and education for minors. These attitudes were among the factors that marginalised Fini's Future and Liberty Party (*Futuro e Libertà*, FL) faction and caused its eventual secession from Berlusconi's PdL.

Though often forced to revise its projects, the centre-right government had nevertheless managed to increase the severity of immigration and immigrant policies. This was sometimes in tune with the policy trends prevailing in other EU countries. The government reduced the number of family members entitled to reunification, which does not contradict the European Directive (Legislative Decree on Family Reunification, 160/2008). As already mentioned, it included a measure in the Security Bill to combat marriages of convenience, which is in tune with other European laws and the guidelines of the European Pact on Immigration and Asylum (13440/2008). The same bill also calls for taxes to renew residence permits and to apply for naturalisation: in other words, the late 2000s' financial crisis, combined with anti-immigrant sentiment, meant it was time to get money from legal immigrants. Once again, these measures do not conflict with prevailing European policy trends. The same remark can be made about the Security Bill requirement of accepting shared basic social values as a condition for receiving and renewing a residence permit and possessing knowledge of the Italian language in order to receive long-term resident status. The fourth Berlusconi government also introduced the so-called *Accordo di integrazione*. This 'integration agreement' takes after the French *Contrat d'Accueil et d'Intégration* and the British points-based system. The agreement foresees acceptance of a list of common basic

principles as a precondition to being granted a stay permit that is renewable every two years. These conditions include the obligation to learn some level of Italian language, history, the Constitution and how social services work and to behave in conformity with Italian laws and civic customs. Initial points can be lost and new points acquired, which can keep immigrants on standby, remedy their losses, lead to expulsion in cases of definitive failure or grant full achievement of long-term residence.

A motion during the debate on the School Reform Project (Law 1/2009), which called for introducing separate preparatory insertion classes for immigrant students who arrive in Italy with linguistic or other cognitive deficits, is also no exception in the European context, though the leftist public deemed it a scandalous form of segregation. The same consideration applies to reserving certain more costly or more socially and politically relevant rights for citizens or long-term resident aliens. The 2008 planned inflow decree entitled only immigrants holding permanent permits to apply as employers. Some of the restrictive measures were also included in the 2009 Finance Bill, such as the exclusion of immigrants from the 'social card' that entitles the poor to receive € 40 per month (Law 133/2008, anticipating the Finance Bill a year later); access to social housing was reserved for immigrants resident at least ten years in Italy and at least five years in the region of application.

The immigration policy of Berlusconi's fourth government was not a striking exception in the context of the EU, but the strongly anti-immigrant public rhetoric of some of its members is indeed exceptional. Upon greeting a representative of new Italian citizens of immigrant origin on 13 November 2008, President Napolitano said that 'such an inflow of new energies, coming from all over the world and taking root in our country, is an element of freshness and strength for the Italian nation.' To this, Umberto Bossi, the Northern League leader and Berlusconi's main political partner, responded with the following: 'In my mind, immigrants represent only a negative resource.'

We do not know what kind of new measures the Northern League will manage to produce. Until now, its radical anti-immigrant stance has been mitigated by an array of actors and factors, with Berlusconi needing to pass measures capable of rescuing him from the many trials he is standing. As the bond between Bossi and Berlusconi has grown stronger and stronger, the Northern League's xenophobic attitudes have found more space. The centre-right's poor results in the 2011 local elections and referenda may change this scenario in future.

Berlusconi had already come to take a severe anti-immigrant stance. In May 2009, he declared that he did not want Italy to become a multi-ethnic country. In June 2009, he said that Milan looked like 'an African city'. The persistence of centre-right anti-immigrants rhetoric will depend on Berlusconi's ability to keep strict command of his party and on the electoral

outcomes of the alliance with the Northern League. We also do not know what influence the ongoing economic crisis will have. Could it, for instance, suggest a renewal of measures to protect national labour? Nonetheless, current EU rules will make it difficult to prevent the circulation of workers from other EU countries once the moratorium period has expired. In Italy, Romanians are already the number-one immigrant nationality.

5 Conclusions

Like other Southern European countries, Italy has been thrown off by its objective needs for foreign manpower and a fear of alarming the public by allowing adequate legal inflows. Also as in other Southern European countries – Spain, in particular – the ‘remedy’ of frequent mass amnesties, together with a flourishing hidden economy and difficult-to-control borders, have produced consistent illegal inflows. The ongoing economic crisis and rising unemployment rates have suggested only a temporary stop in 2009 to planned inflows. A persisting economic crisis will likely influence immigration policy, suggesting more restrictive measures as far as legal immigration is concerned.

Already, and especially under the present centre-right government, severe measures have been introduced to combat illegal immigration. They would have been even more severe if initial plans were not softened, as they were by actions not only from the centre-left opposition, but also from part of the majority and the vocal civil society. In Italy, as in other European countries, a set of factors, which is illustrated in the conclusion chapter of this book, have moved and are moving immigrant and immigration policies in neo-assimilationist, neo-functionalist, security-oriented directions. In Italy, these common trends are, more often than elsewhere, on a zigzagging path. On the one hand, the public’s peculiarly strong anti-immigration backlash and the increasingly influential presence in government of the xenophobic Northern League accelerated the trend – to the point that the Italian government has been the object of frequent admonitions by international organisations. On the other hand, there is a persistent humanitarian pressure by the Catholic Church. Moreover, requests to regularise and protect immigrant workers come not only from unions, but also employers and families who, in Italy as in Spain, make great use of domestic labour. Together, such groups aim at softening severe ways. And they can find a sympathetic ear even in the centre-right majority. However, up until now, pro-immigrant counter-pressure has always given priority to the protection of basic rights over broadening long-term residents’ citizenship rights.

The Italian case presents features similar to other political systems, which, because of mass emigration, colonisation or redefining borders still

perceive having part of their co-ethnic population abroad, even though bonds with the ancestor land have dissolved in many cases. These legal systems give preferential treatment to co-ethnic persons not only concerning entry and residence in the country, but also allowing the transmission of *jus sanguinis* abroad without strict requirements. This attitude may conflict with changing international scenarios and stringent economic reasons that compel a revision of the policy, as so happened in Germany and Poland. Up until now, Italy, like other Southern European countries, has reinforced the co-ethnic principle. By contrast, rights concerning easier access to nationality and local voting for legal non-EU long-term resident immigrants were often proposed, though never passed. Contributing to the changing scene has been Fini, an eminent centre-right figure whose own cultural evolution – his eternal movement towards the centre of the political spectrum – has also involved being in favour of legal immigrant rights. Fini's followers, in alliance with some majority members and the whole opposition, had again launched proposals to reform nationality and grant local voting. Though it proved unsuccessful, this move shows that the issues of immigration and immigrant rights are used not only by many centre-left parties. To favourably reposition themselves, out of fear of losing electoral consent, the issues can also be used in an opposite direction, by rightist leaders and parties seeking to increase their coalitional potential. This, it seems, is rather an Italian idiosyncrasy, at least in the present European context.

On the other hand, Italian decision-making follows not just general trends, but also some general rules. Immigration and immigrant policies are pieces of a larger puzzle. They are embedded in the institutional, economic and international contexts in which they are conceived and reconceived. They can be part of economic strategies, they can be inserted into securities provisions and they can be adopted with the aim of reinforcing national identity. Like other policies, they can include internally contradicting measures and conflict with other policies born of the same period. The international context can discipline and correct the more radical political attitudes, unless of course radicalism also prevails in the democratic EU. Policies are continuously moulded by a combination of factors and by the action of very different agents, many of them located outside formal law-making processes. This is why politics always matters, but does not always lead the race.

List of interviewees

Interviews were conducted by the author between May 2000 and November 2010. First positions given are those that were occupied at the time of the interview. Unless indicated otherwise, governmental posts are in Italy.

Amaducci, Giulia

Scientific Officer, Directorate-General for Research, Unit K3, Social Sciences and Humanities, European Commission

Amato, Giuliano

Former Italian Prime Minister and Vice-President, Constitutional Convention of the European Union

Anneccchino, Nicola

Head, Immigration and Asylum Unit, Directorate-General for Justice, Freedom and Security, European Commission

Bolaffi, Guido

Head, Social Affairs Department, Ministry of Welfare

Bonetti, Paolo

External expert

Boniver, Margherita

Former Under Secretary, Ministry of Foreign Affairs

Briguglio, Sergio

External expert

Calvisi, Giulio

Immigration Policies Officer, Democratic Party (PD)

Carlà, Daniela

Head, Department of Labour, Ministry of Welfare

Carpani, Guido

Former Secretary, State Regions Conference (October 1994 – June 2001), General Director, Presidency of the Council of Ministers, currently serving on a temporary basis at the General Secretariat of the President of the Italian Republic

Collet, Elisabeth

Head of the Forum on Migration and Integration within the European Policy Centre (EPC), Brussels

Contri, Fernanda

Member of the Constitutional Court and former Minister of Social Affairs

Di Luca, Alberto

Member of Parliament

Einaudi, Luca

Member of the Coordination Group on Inflows Planning of the Presidency of the Council

Evangelisti, Fabio

Member of Parliament

Ferraiolo, Sergio

Official of the Legislative Office of the Ministry of Interior

Finocchi Ghersi, Renato

Head, Legislative Office, Department of Social Affairs

Fontan, Rolando

Member of Parliament

Gazzella, Giulio

Official of the Ministry of Interior

Guelfi, Carlo

Advisor of the President of the Italian Republic and Director of the Presidential Secretary's Office, former legal advisor to Minister of Interior Giorgio Napolitano (May 1996 – October 1998)

Iurato, Marcello

Parliamentary Private Secretary to Under Secretary Alfredo Mantovano, Ministry of Interior

Landi di Chiavenna, Giampaolo

Member of Parliament and Immigration Policies Officer, National Alliance Party

Menichini, Isabella

Official, Ministry of Foreign Affairs

Malagola Lorenzo Welf

Head of the Technical Secretary of the Minister of Labour and Social Affairs

Moroni, Rosanna

Member of Parliament

Napolitano, Giorgio

Minister of Interior

Niessen, Jan

Director, Migration Policy Group (MPG), Brussels

Palanca, Vaifra

Secretary, Committee for Immigrant Integration Policies

Pastore, Ferruccio

Vice-Director, Centro Studi di Politica Internazionale (CeSPI), Rome

Pinto, Giovanni

Director, Immigration Office, Central Immigration Department of Frontier Police, Ministry of Interior

Pittau, Franco

Coordinator, Statistical Immigration Dossier, Caritas-Migrantes

Pratt, Sandra

Head, Immigration and Asylum Unit, Directorate-General for Justice and Home Affairs, European Commission

Sacconi, Maurizio

Former Under Secretary and Minister of Labour and Social Affairs

Silveri, Maurizio

Director-General, Immigration, Ministry of Labour and Social Policies

Turco, Livia

Minister of Social Affairs

Zagrebelsky, Gustavo

Former Chairman of the Constitutional Court

Notes

- I This chapter reports on a number of outcomes of activities by IMISCOE Cluster C9, a working group focused on the multilevel governance of migration, and a study entitled 'Policymaking: Between periphery and centre, between member states and the EU, between formal and informal actors', which was financed by the Italian Ministry of Education, University and Research (MIUR). Some results have already been presented by the author in Arena, Nascimbene & Zincone (2006) and Zincone (2006b). For more information on the evolution of Italian immigration, as well as its specific political and statistical features, see Italy's country profile at <http://www.fieri.it>. The empirical research is based on an analysis of documents and legal proceedings and interviews with privileged observers, a list of whom is available at the end of the chapter. I will not quote the key informants I interviewed by name since I preferred the off-record mode, which allowed for more candid answers.
- 2 The UK's and Germany's traditional flows did not head to Italy, though migrants from the Maghreb (especially from Morocco and, to a lesser extent, Tunisia) became a significant component of Italian immigration.
- 3 Billari and Dalla Zuanna (2008) have also underscored the peculiarity of Italy's inflows between 1999 and 2004.
- 4 In August 2006, the centre-left government presented the Amato Bill, which was intended to modify the Nationality Law framework. This bill led to the drafting of a law, but the fall of the government prevented it from being passed. This will be discussed more in depth later in the chapter.
- 5 In the year 2009, only 17,603 asylum requests were addressed in Italy, while 2008 addressed 30,492. Sending back 'boat people' without giving them the opportunity to request asylum may have affected the fall in numbers. The practice was criticised by the European Community and the UN Commissioner for Human Rights.
- 6 Outflows were as follows: 1,210,400 (1861-1870); 1,175,960 (1871-1880); 1,879,200 (1881-1890); 2,834,739 (1891-1900); 6,026,690 (1901-1910).
- 7 This was a way of conceiving nationality as belonging to an ethnic group, a cultural frame doomed to persist. This long-lasting attitude is quite similar to the one Brubaker attributed to Germany (1992).
- 8 Brazil included in its 1891 Constitution (article 69) automatic naturalisation for all persons resident on 15 November 1889, the day on which the Republic was proclaimed. Citizenship could be legally relinquished within six months, but this was strongly discouraged by the public authorities (Rosoli 1986; Lahalle 1990; Pastore 2004b).
- 9 Between 1860 and 1943, the Italian Constitution was the so-called Statuto Albertino, formerly the 1848 Constitution of Piedmont-Sardinia, a liberal charter accorded by the monarch Carlo Alberto.
- 10 Article 147 of Royal Decree no. 773/1931 (regarding public security) was updated in 2000 and 2002 (Ministerial Decree, 11 December). It requires notifying the police of foreign guest workers' personal details within 24 hours. Law 189/2002 extended this obligation to anybody hosting foreign guests for any reason (article 7). Nevertheless, breaches to this obligation are no longer a crime, and since 1994 have only been punishable with a fine (Government Decree under Parliamentary Delegation no. 480).
- 11 The principle was declared in the UN Convention on the Nationality of Married Women, which was approved on 20 February 1957 and went into effect on 11 August 1958. On 24 November 1977, a resolution adopted by the Council of Ministers of the Council of Europe (which went into effect on 1 May 1983) suggested

- that married women would not only be allowed to keep their original nationality, but to transfer it to their spouses and children as well.
- 12 Law no. 39, 8 March 1975 reduced the majority age from 21 to eighteen.
 - 13 Before 1986, the Italian government had not only allowed, but also regulated, dual citizenship through bilateral agreements. Even in 1992, dual nationality was mainly due to 'family reasons': 1) to make the Italian Nationality Act compatible with marriage to foreign partners and 2) to facilitate the reacquisition of Italian citizenship by foreigners who had lost it.
 - 14 It is debatable whether this theoretically dense concept can be applied to descendants of Italian emigrants. It is used in this context simply to reflect a current use in the Italian discussion on these themes.
 - 15 This myth partially conflicts with the empirical evidence of studies on the Italian diaspora (Bolzman, Fibbi & Vial 2003; Devoto 2005; Sollors 2005; Vegliante 2005), which show a prevailing low political identification with the Italian Republic. See also doubts expressed by Fini, leader of the National Alliance nationalist party, even before the results of the 2006 elections came in (cited in Tintori 2006).
 - 16 Due to the complexity of procedures and the inefficiency of Italian public administration, one must consider not only the years of residence, but also the time needed to deal with bureaucracy. The average wait for obtaining Italian nationality was 2.9 years in 2003, 3.2 in 2004 and 3.8 in 2005 (data courtesy of the Italian Citizenship and Statistics Department). Note that the applicatory rules for enforcement of Law 91/1992 had introduced a maximum wait of 730 days (Decree of the President of the Republic, no. 362, 18 April 1994).
 - 17 In 1919, at the Conference of Paris, the regions of Trentino and Alto Adige (including Trieste) and Istria were incorporated into Italian territory.
 - 18 It is worth noting, though, that statute no. 73 of 21 March 2001 had allocated special funds to promote the study of Italian language and culture among Italian minorities in Croatia and Slovenia.
 - 19 Fifty-nine per cent are first-generation migrants, 35 per cent are second-generation descendants and the rest are presumably reunified children.
 - 20 The PdL's formation was announced at the end of 2007, though the party was officially founded on 29 March 2009. Its main constituents are Berlusconi's Forward Italy (Forza Italia) and Fini's National Alliance (Alleanza Nazionale), along with many small parties that then entered into the new party.
 - 21 ¹Act no. 1 of 17 January 2000 and Act no. 1 of 23 January 2001. Italians abroad, who were divided into four continental constituencies, were assigned six representatives in the Senate and twelve in the Chamber of Deputies.
 - 22 The pro-immigrant role of the Catholic Church appears very important in Portugal as well (Peixoto, Sabrino & Abreu 2009).
 - 23 This is due to the country's geographical position and the extent of its black economy, in which undocumented migrants can find a job, pay back what they owe for getting smuggled into the country or for their fake tourist visas, live on their own salaries and possibly send money back home. The country also hosts strong criminal organisations that can use illegal immigrants as labourers.
 - 24 To conceal the failure, the application deadline was delayed three times by a subsequent decree in 1987, and a special law was voted on in 1988 for the purpose of allowing more persons to apply (Adinolfi 1992; Sabatino 2004). Nonetheless, no more than 20 per cent of the potential applicants were regularised (Maciotti & Pugliese 1991).
 - 25 ¹This was the case of Law 30/2007, allowing the expulsion of Romanian citizens for reasons of public order and public security after the assassination of a woman named Giovanna Reggiani by a Romanian Roma in Rome. Generally speaking,

- immigration and immigrant-related policies appear in reaction to dramatic events rather than as the planned strategies the issues would merit (Penninx 2004).
- 26 Napolitano (2006: 301-302) remembers a challenging relationship with German Minister of Interior Manfred Kanter and his good personal relations with conservatives like Spain's Minister of Interior Jaime Mayor Oreja.
 - 27 By means of planned inflows, 58,000 immigrants legally entered the country in 1998 and 1999, 83,000 in 2000 and 89,400 in 2001.
 - 28 The centre-left government repudiated the National Institute of Social Security (INPS) Memorandum, which stated that immigrants were entitled to poverty benefits, while the law in favour of maternity (no. 53, 8 March 2000) that granted benefits to single mothers, as well as for the third child, restricted those rights to immigrants holding a permanent residence permit.
 - 29 Minister of Interior Bianco issued a Ministry of Interior Memorandum (no. 300, 4 April 2000) that made it more difficult to obtain a permanent residence permit. In addition to the five years of legal residence required by law, the immigrant had to always have held a work permit renewable for an indefinite period.
 - 30 The Ministry of Interior has always played a prominent role in immigration and immigrant-related policies. An empirical survey of parliamentary questions to the government indicated this minister as the main recipient for such questions (Fedele 1999).
 - 31 The first Berlusconi government began after the May 1994 electoral victory and fell in January 1995. The second government began after the June 2001 election and was replaced by a third in April 2005, which lasted until the installation of the centre-left government in May 2006.
 - 32 The first electoral reform in 1993 concerned the direct election of city mayors (Law no. 81/1993). The reform process reached its peak with the 1993 referendum, which sanctioned the shift to a majority system for the election of the Senate. Two laws followed, the first one definitively reforming the Senate electoral system (Law no. 276/1994) and the second amending the Chamber of Deputies electoral system (Law no. 277/1994). Lastly, in 1995, the regional electoral system was also reformed (Law no. 43/1995).
 - 33 Fast-track anti-filibustering measures were introduced with the 1997 and 1999 reforms of the parliamentary rules, and other proposals have been made more recently.
 - 34 Under the Bossi-Fini Law, foreigners who return to their countries of origin without having satisfied the minimum requirements to receive benefits (twenty years of contributions and a minimum age of 65) lose all their contributions unless their retirement scheme is based solely on their own contributions, in which case they only get what they themselves have paid in. By contrast, the previous system included a special fund at the National Institute of Social Security (INPS) for the return of these contributions plus 5 per cent interest.
 - 35 Italy is one of the EU countries with the highest use of domestic labour (Sarti 2006).
 - 36 Planned flows were 79,500 in 2002, 2003 and 2004. In 2005, there were 79,500 entrances from new member states and 79,500 from non-EU countries. In 2006, there were 170,000 from new member states and 170,000 from non-EU countries.
 - 37 Even in the 2006 decree (issued by the President of the Council of Ministers on 15 February), the disproportion in favour of seasonal workers was maintained. The decree allowed for 88,000 seasonal employed workers, 78,500 non-seasonal contract workers and 3,000 highly qualified self-employed workers. The entry of 500 non-seasonal employed workers or self-employed workers of Italian descent was also

- planned to comply with a co-ethnic principle that the centre-right had espoused since its first flow decree.
- 38 The 'unified contract of employment and residence' was introduced. This involved hiring a worker from abroad, with an obligation for the employer to guarantee accommodation and cover the cost of return to the country of origin in the event of dismissal. Residence permits became renewable only for the same period of time for which they were issued (previously, they could be renewed for twice as long), and in any event for no more than two years (no more than nine months for seasonal workers, one year for temporary workers and two years for workers with permanent contracts); applications for renewal had to be presented much further in advance of the expiry date (90 days for workers with permanent contracts, 60 days for temporary workers and 30 days for the others; under the Turco-Napolitano Act, it was 30 days for all cases).
 - 39 See the Convention of April 2005 between the Ministry of Interior and the National Association of Italian Municipalities (ANCI), Caritas and the Italian Christian Labour Association (ACLI), which called for the involvement of patronages to enable immigrants to get the necessary documentation for the issue or renewal of their residence permits in three municipalities (Pavia, Cuneo and Modena). On 16 February 2006, another convention between the Ministry of Interior and ANCI set the basis for the simplification of bureaucratic procedures in permit renewal (see Caponio 2006). In May 2006, however, a memorandum delegated the handling of renewal procedures to the post office and a € 70 charge was introduced.
 - 40 *L'Espresso* 23 September 2008.
 - 41 These two different approaches derived from the different guidelines, given in oral form, by Minister of Interior Roberto Maroni and by the Prefect of Rome concerning implementation of the 3676, 3677 and 3678 Ordinances of the Prime Minister 'on urgent civil defence dispositions in order to cope with the emergency state due to the Roma settlements', 30 May 2008.
 - 42 Directive 2004/38/EC is entitled 'On the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States'.

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8 The case of Spain

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1 Introduction

Foreign migration to Spain is relatively recent and so, consequently, are policies related to both immigration¹ and the integration of immigrants. The first law dealing with these issues was the Ley de Extranjería, a law on the rights and freedoms of foreigners in Spain (from herein simply referred to as the Foreigners Law) that was enacted in 1985, just a year before Spain joined the European Communities. At that time, there were merely 250,000 legal foreign residents in the country (Watts 1998: 661). During the last two decades, however, immigration flows have swelled significantly to produce a completely new demographic situation. Today the nation hosts more than 4.5 million foreign residents, which represents about 10 per cent of the total population.² This makes Spain one of the European Union's leading immigration countries. Spain's percentage of immigrants in relation to its total population has reached a level comparable to that of other North-Western European countries. Growth has been especially visible in certain regions such as Madrid, Catalonia, Andalusia, Murcia, Valencia, the Balearic Islands and the Canary Islands. This particular background makes the Spanish case an interesting one to contrast with other North-Western and Central European countries. A long-standing tradition of emigration that lasted up until just recently and the increasing momentum that immigration has gathered in two decades have geared Spanish policymaking to a starting point distinct from those that came before it.

Studying Spanish policymaking in these fields is not easy. Although there is a fast-growing body of scientific literature on Spanish immigration and the social processes of newcomers' integration into Spanish society, little research has been systematically undertaken to examine the processes of how policies in these fields are made (Agrela Romero & Gil Araujo 2005; Carrillo & Delgado 1998; Casey 1998c; Lopez Sala 2005b; Morén-

Alegret 2005b; Ramos, Bazaga, Delgado & Del Pino 1998; Ramos & Bazaga 2002; Ruiz Vieytez 2003; Tamayo & Delgado 1998; Tamayo & Carrillo 2002; Zapata-Barrero 2002, 2003a; Kreienbrink 2008). Most literature on policy deals with the content of policies. Even works that specifically focus on the making of policies do not offer a comprehensive view: focus falls either solely on immigration or integration; merely one aspect of either field is analysed; or only a static description is given of relations between actors at a given moment in time.

For background, we will first outline the principal characteristics of immigration in Spain. Next will come a bird's-eye view of the evolution of migration and integration policies. In the following sections, we will zoom in on immigration policies and integration policies. We will delve not only into their formal content as laid down in official documents, but also explore their implementation, thereby describing wherever possible which actors are involved. On the basis of previously scattered information, our endeavour is to produce a basic description of the process of policymaking in the fields of Spanish immigration and integration.

2 Background and characteristics of immigration in Spain

For most of the twentieth century, internal migration and international emigration were key factors determining the distribution of Spain's population at a given time. Both flows were mainly rural-urban ones. Catalonia, the Madrid Metropolitan Area and the Basque Country (the three regions where most industry was concentrated) were the nation's main areas of destination, while Andalusia, Extremadura and Galicia experienced the most emigration. Spain's international emigrants departed for urban areas in European countries such as Germany and France, as well as some Latin American countries. This resulted in an unequal distribution of the population never before paralleled.

It was only in the mid-1980s that the country experienced a visible reversal of migration patterns. Explaining why countries such as Spain, Italy, Portugal and Greece became immigration destinations during the 1980s and 1990s, King, Fielding and Black (1997) point to internal migration patterns and the demand for labour. Their model highlights three specific trends from the 1950s to the 1990s: the coexistence of high- and low-productivity sectors; the rapid transfer of indigenous workers from low- to high-productivity sectors through short- or long-distance migration; and the rapid decline of an available supply of indigenous labour in rural areas. The late 1980s and 1990s ushered in a new phase for Spain altogether, as a reduced rate of investment was combined with economic restructuring, recession and high unemployment. Since low wages were the only means for businesses to retain a competitive edge, employers turned to immigrant

workers. Labour immigration to Southern Europe was thus not only a matter of supply, but also a particular response to employers' demands for cheap labour (Calavita 2005: 68). As shown in Table 8.1, immigration rose to unprecedented levels, notably beginning in 2000. This rapid growth was linked to a booming Spanish economy driven by expansion of the housing market (and subsequent construction industry) as well as Spain's strong foothold in the tourist industry. These economic developments went hand in hand with the government's rather lenient immigration policy.

The present-day immigrant population – with its more than four million people registered in local censuses, which also includes undocumented immigrants – presents very diverse origins. As shown in Table 8.2, the largest groups are Moroccans and Ecuadorians, each comprising a total of approximately half a million. Romanians, Colombians and British nationals each comprise over one quarter of a million. Many other nationalities are represented in another two million foreigners. As the table also shows, there is a sizeable immigrant population from the EU-25, of which a significant part corresponds to the migration of pensioners of North-Western Europe (mostly from the United Kingdom and Germany). Moreover, there is a sizeable new immigration of economic migrants from Central and

Table 8.1 *Annual inflow of foreigners in Spain, 1998 – 2006*

<i>Annual inflow of foreigners</i>	<i>Year</i>				
	1998	2000	2002	2004	2006
	57,195	330,881	443,085	645,844	802,971

Source: Estadística de Variaciones Residenciales, National Institute of Statistics (INE 2007)

Table 8.2 *Foreign population according to local register, 1 January 2006*

<i>Origin</i>	<i>Foreign population</i>
Europe	1,609,856
EU-25	918,886
UK	274,722
Rest Europe	690,970
Romania	407,159
Africa	785,279
Morocco	563,012
The Americas	1,528,077
Ecuador	461,310
Asia	217,918
China	104,681
Oceania	2,363
Australia	1,633
Total	4,144,166

Source: National Institute of Statistics (2006)

Eastern Europe, namely Romania and Bulgaria. Latin Americans account for another important share of immigrants, their high percentages being a reflection of preferential treatment in legislation as well as the effects of re-viving old social networks.

In terms of economic sectors, the majority of migrant workers from outside the EU are concentrated in services (58.1 per cent), construction (24.6 per cent), industry (11.1 per cent) and agriculture (6.2 per cent) (Pajares 2007: 52). If we analyse these figures according to gender, we find that 42.3 per cent of the total of male foreign workers have jobs in construction while 89.7 per cent of the total of female foreign workers are in the service sector – more than half of them in domestic employment and nearly less than half in commerce (Pajares 2007: 52). In terms of concentration by origin, the rotation or displacement of certain collectives in specific sectors or provinces should be remarked upon. For example, in 2002, Moroccans were displaced by Ecuadorians in the countryside of Murcia and by women workers from Poland and Romania who came to pick strawberries in Huelva (Cachón 2003: 264). Increased immigration from Latin America has also meant there are more women domestic workers from Ecuador, Bolivia and Peru. Finally, the position of immigrants in the labour market also depends on the time of legal residence: while newcomers or recently regularised immigrants represent the majority in sectors like agriculture or domestic service, after an initial period of legal residence, migrant workers tend to move into sectors like construction as well as, in the case of women, other services (Pajares 2007: 51).

3 Legal framework and the evolution of migration and integration policies

From a legal perspective, the evolution of Spanish immigration and integration policies can be divided into four different phases, each corresponding to major legislative events. Running from the mid-1980s until the early 1990s, the initial period produced a first generation of laws on immigration, including the first Foreigners Law. Spanning most of the 1990s, the second phase witnessed the birth of the next generation of immigration laws and the simultaneous adoption of the first policies on immigrant social integration. Thirdly, 1999 onwards marks a phase that brought about significant changes to the Foreigners Law, as well as ushered in a new turn in integration policies. Finally, 2009 has seen again significant changes in the basic legislative framework concerning immigration and asylum.

Taking chronological stock of policies on immigration and integration within a four-generational framework allows us to contextualise them within different historical and political lights. However, grouping policies in phases for the sake of theoretical comparison does not deny the continuity

that runs throughout the core of the legal system, particularly in immigration policies. Although political majorities of every era have inspired either more progressive or more conservative tendencies, the main guiding principles of immigration legislation have remained pretty near to those promulgated by first regulations. Yet, the number of regulations and the sheer volume of the main legal texts have increased. Such substantial continuity cannot be presumed, however, in the field of integration policies. These emerged only in what we above defined as the second phase of national policies, and they changed significantly in later phases. Thus, the first general trend to be noted is that immigration policies in which central state institutions are almost exclusive actors show much more continuity than integration policies whose design and development is influenced by many more actors and stakeholders at different levels of society.

To reiterate, Spain had primarily been an emigration country and only in the mid-1980s did its reversal of migration patterns become visible. In 1986, the number of Spanish returnees from abroad was for the first time higher than the number of Spanish emigrants. In that same year, the number of foreign immigrants was still growing, though it remained low, at a level just below 300,000 (Watts 1998: 658, 661). Just the year before, in 1985, the first Foreigners Law³ was passed in the central parliament. The way these events unfolded indicates that Spain's full incorporation into the European Communities in 1986 played a more important role for introducing the law than any immigration statistics.

Although the main aim of this first substantial regulation was to build a framework for legal support and to specify conditions of stay for foreigners in Spain, it also introduced opportunities to restrict entrance. Moreover, granting residence permits on a one-year basis encouraged the notion of temporariness to predominate in policies. In view of the earlier absence of a comprehensive immigration and integration policy at Spain's central level, the law was a relative novelty. This marked the birth of the first generation of legislation.

The 1985 Foreigners Law, however, was not the first regulation to be born to this generation. In fact, it was preceded by other related pieces of legislation that were developed in unison and had a bearing on Spain's inclusion in the European Community. Thus, the Law on Asylum⁴ was passed in 1984 and its implementing regulation⁵ in 1985. The Foreigners Law would also be developed through the corresponding developing regulation in 1986.⁶ In addition, the Royal Decree of 1986⁷ regulated the situation of European Economic Community state citizens ('European' citizenship, *per se*, did not exist at that time). To get a complete view on the legal framework of immigration policies, two important Constitutional Court rules must be cited. The first is judgement number 107/1984.⁸ This ruling, issued prior to the approval of the Foreigners Law, had already clarified the basic rights that would or would not be enjoyed by foreigners,

according to the new constitutional system. As such, the Constitutional Court established three different groups of rights, with the recognition that foreigners could be entitled to enjoy two of them under different conditions.

According to the court, a first set of fundamental rights had to be equally recognised for everybody, including foreigners regardless of their legal situation in the country. These included basic rights such as rights to life, freedom of expression and judicial guarantees. By contrast, most so-called political rights (e.g. to vote or to participate directly in public affairs and responsibilities) were not applicable to foreigners. Article 13.2 of Spain's Constitution prohibits such possibilities (the only exception being the right to vote in local elections if there is a reciprocity agreement with a foreign resident's home country). The remaining rights recognised in Title I of the Spanish Constitution may be extended to foreigners depending on their legal situation in Spain, and according to what has been established in the Foreigners Law. The conditionality also applies to differences in how legislation can regulate the concrete implementation of these rights in cases concerning foreign inhabitants. This early Constitutional Court ruling of 1984 would later have an obvious influence on the drafting of the aforementioned legislation.

The second important Constitutional Court judgement is classified as number 115/1987.⁹ It was provoked by the national ombudsman, finding that some articles of the 1985 Foreigners Law, such as those regarding the right to form associations and to demonstrate,¹⁰ did not conform with the 1978 Spanish Constitution. The Constitutional Court ruled partially in favour of the ombudsman's position and, as a result, some specific paragraphs of the law were declared void.

As for Spanish nationality law, many of the country's constitutions included the basic regulations of naturalisation during the nineteenth century. From the twentieth century up until the present-day, however, the main bulk of this legislation has been incorporated into the civil code. Reflecting the legacy of emigration tradition in Spanish society, the criterion for nationality assignation is more an *jus sanguinis* model than an *jus soli* one. Moreover, in Spanish legal tradition, the terms 'nationality' and 'citizenship' are mostly synonymous. According to the regulation in force, foreigners can acquire Spanish nationality by residing legally in the country for a continuous period of ten years. This being a general rule, some exceptions are also accommodated. For example, only a two-year legal residence is required to acquire Spanish nationality by nationals from Brazil, Andorra, Portugal and former Spanish colonies (apart from the Western Sahara and Morocco), as well as descendents of Spanish Sephardic Jews. A significant number of immigrants who arrived in Spain within the last ten to fifteen years have become Spanish nationals; those of Latin

American origin are among the highest-ranking numbers. This practice works to minimise the total number of foreigners reflected in the statistics.

As a whole, this bundle of first-generation legislation puts clear-cut emphasis on the control of immigration flows and the regulation of formal requirements for foreigners to enter and stay in Spain. After 1985, most foreigners were obliged to conform to new, concrete legal stipulations, and therefore many immigrants would sooner or later fall into an illegal administrative situation for the first time. Beyond this general rule, both European Community citizens and asylum seekers enjoyed a privileged status provided for in specific pieces of legislation. The privileges of asylum provoked a flow of applications from certain groups of immigrants. However, within a few years, the restrictive interpretation of the asylum regulations followed by national authorities curbed this tendency.

A significant shift in migration policies is identifiable around 1990. On 26 June of this year, the United Left (IU)¹¹ parliamentary group submitted a motion to the Congress of Deputies asking for regularisation of those undocumented foreigners who had resided and worked in Spain for some period of time. This motion pleaded the right for families to reunite and requested preparation of a draft immigration bill to help realise the right. It also urged the government to prepare a report on the situation of foreign immigrants in Spain. The ensuing political discussion thus introduced significant elements of integration policies into the discussion. In office at the time, the Socialist Party (PSOE)¹² responded by conveying a communication to Parliament regarding the situation of foreigners and supplying basic policy guidelines. On 13 March 1991, almost all parliamentary groups agreed on a resolution urging the government to organise a regularisation process and to adopt more legislative and/or administrative integration measures that would complement the existing framework. The consequence of this resolution was an extraordinary regularisation procedure, which was instated the following summer. With enthusiastic collaboration by most relevant social actors, the government received approximately 120,000 applications of undocumented immigrants. Most of these applications led to residence permits.

After the EU treaty entered into force in 1994, the Law on Asylum was substantially modified¹³ and, in 1995, its implementing regulation was also adapted to the new demands of European inter-governmental agreements in the field.¹⁴ A restrictive view of asylum was thus instated and, since then, foreign immigrants have hardly used asylum to enter Spain. This wave of changes did not alter the 1985 Foreigners Law, though it did significantly change its developing regulation, which was derogated and substituted by a new text in 1996.¹⁵ Following the main concerns expressed in previous years both in Parliament and in the public debate, the new 1996 Royal Decree focused on the social integration of immigrants. Indeed, it included more specific regulations about family reunification procedures,

unaccompanied minor immigrants and some basic social rights. Furthermore, the new developing regulation permitted another regularisation process for undocumented foreigners.

All such changes were nevertheless still part of a legislation that basically aimed at immigration control and management. The introduction of an annual quota or contingent system from 1993 onwards testifies to this. In practice, however, a very specific relation developed in this period between regularisations, on the one hand, and the annual quota, on the other; the regularisations seemed to fill the largest part of the quota.

What did change in this period was the very fact that integration had arisen as an issue in legislation and policy. Apart from the social aspects that were introduced in 1996's new developing regulation of the Foreigners Law, as mentioned above, three major steps were taken in this respect. First, the central government started to look at immigration as more than a mere trans-border flow. As such, integration policies were for the first time considered and, in 1994, a national strategy was drafted. This was known as the Plan for Social Integration of Immigrants. With the benefit of hindsight, the document can hardly be considered influential; however, it was still an important hallmark of the new field of integration policy. Parallel to this plan, two instruments were created to assist the development of social integration policies: the *Foro para la Integración Social de los Inmigrantes*, a forum on the social integration of immigrants (from herein simply referred to as the Forum) and the *Observatorio Permanente de la Inmigración* (OPI), the permanent observatory on immigration. The Forum¹⁶ is the supreme government's consulting body on immigration and integration policies. It comprises representatives of the public sector and social organisations involved in the field as well as immigrant associations. Though in the beginning the Forum lacked ministerial support – besides the Ministry of Labour and Social Affairs – its position was subsequently consolidated to ensure participation by all relevant ministries and institutions in its functioning. OPI was developed as a tool to monitor immigration and integration and, on the basis of such analysis, suggest policies.

The introduction of integration policies in this period added to the complexity of relations between the different levels of governance in Spain. Immigration policies remained the exclusive competence of the central institutions. This decision was made in accordance with Article 149.1.2 of the 1978 Spanish Constitution, which stated that all legislative and executive powers related to immigration, asylum, nationality, passports, borders and aliens are the sole responsibility of the national parliament and government. On the flipside, the system generated by the autonomous communities established a distribution of responsibilities in which the regional governments were responsible for all key policy vis-à-vis the accommodation of immigrants.¹⁷ This came as the result of transferring responsibilities from central to regional administrations.¹⁸ Thus, autonomous communities

and municipalities had begun endeavouring to manage immigrant integration through their own policies in matters such as social welfare, education, health and housing. Later on, they began to formulate 'immigration plans', referring mainly to certain aspects of integration. As the fifth section in this chapter shows, in various places such bottom-up initiatives had a range of contents and forms.

The third phase in the development of legislative initiatives dealing with immigration started in 1999. The beginning of this period was marked by political turmoil and changes in government. What emerged was a long social debate and resounding consensus among political parties that the 1985 Foreigners Law needed to be adapted in view of Spain's increasing rate of immigration. A second Foreigners Law, passed by Parliament at the end of 1999,¹⁹ was seen by many as a positive turning point. Although it did not contain very substantial modifications, it intended to change how the quota functioned in order to effect its instrumentation for labour market policy and new entry, rather than regularisations. From the social perspective, the new law recognised a significant number of immigrant rights, including clear provisions favouring individuals in an illegal situation. Thus, basic social aspects such as access to education, public health, social benefits and assistance were guaranteed to all those foreigners residing *de facto* in any municipality. Furthermore, legal residents enjoyed a substantial number of additional rights. This second Foreigners Law entered into force in 2000.

Nevertheless, the political consensus on this new law was not shared by the conservative People's Party (PP).²⁰ They argued that this new legislation provided few possibilities to fight undocumented immigration to Spain and conceded too many rights to undocumented foreigners. Thus, after the PP had won the national 2000 elections in an absolute majority and again came into power,²¹ its recently elected conservative government showed no intention of drafting the developing regulation of the new 1999 law. In fact, it came with a significantly modified law that was accepted with the help of the PP's overwhelming majority in December 2000.²² This new law took three divergent directions. Firstly, legal provisions became more restrictive, and many fundamental rights were denied for immigrants without a residence permit. Granting resident permits to undocumented immigrants already residing in Spain was strongly restricted. Secondly, the whole regime of issuing sanctions against undocumented foreigners – or people collaborating with them – became much harsher both on paper and in procedure. Finally, the discretionary competence given to the government to develop the law's actual content was enormously expanded. On this basis, the government proceeded to pass an extensive reform of the developing regulation in 2001.²³

In 2000, the government approved a plan for integrating foreign immigrants called the Programa Global de Regulación y Coordinación de la

Inmigración en España, or the global programme of immigration regulation and coordination in Spain (GRECO).²⁴ This plan was primarily aligned with the restrictive policy reflected in the PP's Law of 2000. Having been based largely on the conception of temporary migration, it thus strongly emphasised return.

Legislative reforms on immigration under the conservative government continued with November 2003's approval of a new set of modifications to the Foreigners Law.²⁵ The new set contained concrete rules on sanctions, extended the scope of visa requirements and regulated – and widened – the opportunity to detain undocumented foreigners in specific centres. Both the legal reform of December 2000 and the November 2003 Foreigners Law were challenged before the Constitutional Court for possible violations of fundamental immigrant rights. These appeals were instigated by several regional parliaments and governments. While the second appeal against the November 2003 Foreigners Law is still pending, in November 2007, the Constitutional Court decided that some of the legal reform of December 2000 articles did indeed violate the fundamental rights of foreigners.²⁶

The general elections of 2004 ushered in a left-wing parliamentary majority, a PSOE government and, overall, a new climate with a different configuration of actors in the field. A new developing regulation of the Foreigners Law was adopted in December 2004.²⁷

The above-mentioned regional appeals bring to bare something that was less visible in the earlier Spanish legislative periods. Coming into focus in the third period was regional authorities' insistence on influencing policies at the national level. On the one hand, these initiatives expressed resistance by some autonomous communities against the restrictive policy implemented by the central government, especially during the years of the PP government (1996–2004). On the other hand, on the basis of their own policy initiatives in the field of integration within various regions (Catalonia, Valencia, Andalusia, Madrid, Navarra and the Basque Country), Catalonia and other regions claimed more executive powers. But it took until 2006, upon approval of a new version of Catalonia's statute of autonomy, to admit formal participation of the autonomous community in the immigration process. The Catalanian track was subsequently followed by the amended Statute of Andalusia. Still, it should be noted that other autonomous communities have shown much less interest in sharing these powers with the state when amending their statutes (Santolaya 2007).

To a certain extent, this last trend has resulted in the latest generation of regulations on immigration issues. This very recent phase has primarily entailed a parallel modification of the two main legal instruments in the field, which were amended in the last quarter of 2009. To begin with, in October, the Act on Asylum was abrogated and the new Act 12/2009 was adopted. This legislative change was catalysed by the need to adapt

Spanish legislation to EU directives, something basically affecting procedural issues. In December, the Foreigners Law was subsequently modified. The new law incorporates not only some recently issued European directives on the matter, but also aligns the new act with important decisions adopted by the Constitutional Court in 2007. The new law seeks to facilitate some degree of decentralisation in the implementation of issuing working permits. In this respect – following what was foreseen in the Statutes of Catalonia and Andalusia – autonomous communities are given a voice. This is probably the most significant shift within the fourth generation of immigration and integration legislation. Nonetheless, this does not mean that the Foreigners Act fully takes on a pro-integration stance. In essence, it remains a legal instrument for regulating immigration.

Immigration and integration policies in Spain thus follow relatively divergent ways. The competences of national, regional and local authorities are different, as are the ranges of actors involved and the subsequent development of policies over time. For this reason, it is productive to separately analyse the policies and their respective developments. In distinct sections below, we will nonetheless endeavour to indicate where the policy fields may touch upon – and influence – each other.

4 Immigration policies and policymaking

As stated above, the first generation of regulations dealing with immigration came about in the mid-1980s. Their emergence had more to do with Spain's imminent accession to the European Community than with immigration itself, which was at that time still at a low level. Basically, these laws and regulations introduced much of the instrumentation for regulation and control that was earlier developed in European Community countries in order to satisfy the European bodies. The background and timing of the immigration policy's institutionalisation explain how the first Foreigners Law (1985) was passed without amendment and with virtual unanimity. These factors also explain why there was hardly any involvement of social, civic or economic actors in the drafting of these immigration regulations, nor any significant reaction at the local or regional levels. In terms of policy effects, the Europeanisation of the first generation of migration regulations produced a permanent conflict between an externally induced restrictive policy and the economic situation in Spain, which was characterised in the 1990s and especially in the 2000s by an increasing demand for unskilled labour (Moreno Fuentes 2005: 110).

Despite many changes in the law (in 1985, twice in 2000, in 2001 and in 2003) and the development of subsequent regulations (in 1986, 1991, 1996, 2001 and 2004), Spain has never resolved the mismatch between its very restrictive entry policies and simultaneous labour demands. This has

resulted in the emergence of an irregular immigration model (Izquierdo 2001) and the implementation of frequent regularisation measures endeavouring to surface ever-growing stocks of irregular migrants. Moreover, very short-term residence permits – and the fact that their prolongation is contingent on a formal work contract – have led many regularised immigrants to fall back into irregularity.

A crucial question that must be answered to understand the significance of immigration regulations and, particularly, their frequent changes is how these regulations have actually worked. To this end, we will focus not only on the formulation of measures, but specifically on their implementation and effects. Inasmuch as immigration policies remain the exclusive competence of the central government, analysing the formulation and implementation of entry and regularisation policies enables us to distinguish two important nuances. First of all, in contrast to entry policies, regularisation programmes – which, in practice, have been the primary avenue for conferring legal status – have come as the result of bottom-up pressures exerted in great measure by social actors as well as by regional and local governments. In this regard, as we will see in the following section, their policy-making more closely resembles that of integration policies. Secondly, in terms of implementation, we have observed increasing participation, ever since 2000, by social actors (particularly employer organisations and trade unions) and a gradual decentralisation of administrative functions to regional and local governments. In the following paragraphs, we will analyse these two key elements of immigration policies.

4.1 *Entry*

The Foreigners Law of 1985 (in force until 2000) maintained the previous policy's practice of submitting each labour migrant entry to administrative control. Employment of non-EU workers was only permitted if employers could demonstrate that they were unable to hire any otherwise suitable citizen or resident of the country. In terms of policymaking, this implied that the evaluation of labour needs was administrative rather than political. Since this evaluation was undertaken by local public employment offices, permission for the employment of foreign workers depended on discretionary interpretations and practices of labour market tests. The absence of a political decision further implied that there was no judicial control on the implementation of entry policies. In terms of policy implementation and effects, this work permit policy (referred to as the 'general regime') obstructed legal entry. This occurred in the following ways: 1) labour market tests were often conducted in a very restrictive manner; 2) there were no clear, objective criteria for admission, which meant employers were faced with excessive uncertainty when it came time to hire; 3) there were insufficient mechanisms to match labour demand with supply; and 4) even when

work permit applications were approved, it took months before securing the actual document.

In order to create new avenues for legal entry, in 1993 the Spanish government launched a quota system. The idea behind this second work permit system was to create a direct way to enter regularly into Spain without submitting individual applications to a test of the labour market. This was only possible in particular economic sectors determined annually by the government, and for a maximum number of applications. In contrast to the general regime, the quota system thus introduced a political evaluation of labour needs. However, in practice, this system functioned as a regularisation programme, as most applications were filed by irregular migrants already in the country. Once applications were approved, foreign workers went back to their country of origin (or to a Spanish consulate in Southern France), applied for a visa and then re-entered into Spain as regular migrants. In contrast to a regularisation programme proper, prior residence was not needed, economic sectors were determined by the state and there was a limited number of annual applications.

From 2000 to 2004, the right-wing government closed off the possibility of entry through the general regime. Although several court judgements deemed this illegal – therefore letting entry remain formally open – in practice, the general regime was no longer an option as labour market tests were done in a very restrictive manner. In these four years, the government endeavoured to channel regular migration exclusively through the quota system. For this purpose, the quota system was modified in two ways. First, in order to avoid the regularisation of irregular migrants through the quota system, job offers could only be made through anonymous recruitment. By signing bilateral agreements with countries such as Colombia, Morocco, Poland, Ecuador, the Dominican Republic and Romania, the selection process became the responsibility of the individual countries' governments. Second, in order to adapt the annual quota to the requirements of the labour market, included in the process were regional governments, employer organisations and trade unions who could help determine the number and type of workers to be covered under this system. In particular, employer organisations' and trade unions' estimations were evaluated at the provincial level by regional governments and then proposed for acceptance to the Ministry of Labour. In turn, the Ministry was responsible for the final decision after consultation with the Higher Council on Immigration Policy.

At this point, it is important to note that the inclusion of regional governments in defining the annual quota indicated recognition of their role in the immigration policymaking process. In practice, however, regional governments had rather limited influence. In many cases, regional governments chose for a zero quota or a very limited one (Catalonia was an exception), thereby requiring the central government to re-evaluate its

estimations (Roig Molés 2007: 292). By contrast, employer organisations and trade unions had a fundamental role. While trade unions took rather restrictive positions, employer organisations defended higher quotas. However, annual quotas have been rather low. To explain this outcome, Roig Molés refers to the fact that many Spanish employers do not follow in a tradition of accounting for their future labour needs. Moreover, in many provinces, employer organisations do not represent the medium and small companies that have the highest demands for foreign workers (*ibid.*).

Although proffered by subsequent governments as Spain's main channel for legal entry, the quota system offered no more than 20,000 to 40,000 jobs per year. While the annual quota had always been rather limited, the number of employer applications registered through this system was even lower. The outcomes may be explained by the rigidities imposed by the annual quota (as established by economic sector, job speciality and province), the limitations of the recruitment process (managed by the governments of countries of origin), and once again, excessively long administrative procedures.

Given the limitations of the quota system, in 2004, with the PSOE again in power, the general regime was restored. The idea behind this decision was that those employers who wanted to hire a foreign worker in particular or who had not anticipated their labour needs in time to be accounted for in the quota system would still have the opportunity to undertake nominative employment of foreign workers. From this point onwards, in order to facilitate procedures in those sectors with huge staff shortages, the Spanish government has issued a quarterly list of occupations in which nominative employment of foreign workers is permitted without first having to conduct a labour market test. The national employment office disseminates this list to the regional governments, where it is discussed at the regional level with employer organisations and trade unions. Ultimately, the list is approved in the Tripartite Labour Commission, which features representation by the Ministry of Labour, Spain's largest employer organisation (CEOE) and the two largest trade unions (CCOO, UGT).

Since 2004, the general regime has become the mechanism *par excellence* for entry into the country. Between June 2004 and June 2007, 352,307 authorisations were processed under this system. Consolidation of the general regime as the main form of entry should be explained firstly by the fact that it was not limited by an annual ceiling and secondly by the existence of significant social networks among immigrants already in the country as well as those yet to come. In other words, these networks have been used to contract new migrants in countries of origin. As such, immigrant social networks have come to fulfil the function of mediation, something which the state has not yet been able to achieve.

After more than twenty years of entry rules and regulations, Spanish policymaking has had its own distinct development. Parallel to the gradual

deployment of a more comprehensive set of policies, there has been a shift from a policy based on discretionary, administrative evaluations of labour needs to a policy based on political decision-making. Such decisions were first made by the Spanish government alone and, from 2000 onwards, by the Spanish government along with regional governments, employer organisations and trade unions. Our first analysis of the attitudes of the different partners involved reveals that regional governments have not always been in favour of open-entry policies. Secondly, while employer organisations have commonly claimed less restrictive policies, their position has varied according to region and depending on whether medium and small companies were represented. Finally, trade unions have often been reluctant to an open-labour migration policy. While they have pushed for the legalisation of irregular migrants who are already present in the country, trade unions have had a much more restrictive position regarding the entrance of new migrants.

4.2 Regularisation

In view of how entrance has actually been controlled, it is no wonder that regularisations have constituted the primary avenue for conferring legal status in Spain. Concretely speaking, the easiest and most common way to obtain a legal status had been to enter with a tourist visa, work illegally for a while and then get regularised in one of the frequent regularisation programmes. Between 1985 and 2005, six exceptional regularisation processes were implemented (in 1986, 1991, 1996, 2000, 2001 and 2005).²⁸ Moreover, the general regime and, in particular, the quota system have often functioned as regularisation programmes. Since 2004, individual regularisation (referred to as *arraigo* – ‘rooting’ in English) has been possible once a migrant has lived in Spain for two years and has established a work relationship of at least one year (*arraigo laboral*) or three years and the prospect of entering into a work contract (*arraigo social*).

The Spanish government has given different reasons for implementing extraordinary regularisation programmes. For one, the government launched different regularisation programmes to reduce the stocks of irregular migrants that had been generated through previous procedures before introducing a new immigration law or regulation (in 1986, 1991, 1996, 2000 and 2005). Regularisation programmes also emerged in reaction to pressure by migrants and their supporters (e.g. protests in churches in 2001). Moreover, the manifestation of particular events, as selected and amplified by the media, spurred on regularisation programmes. These events, such as 2001’s fatal accident involving Ecuadorian workers, often called attention to the precarious life of irregular migrants.²⁹ Finally, the government also argued, most remarkably in 2005, that regularisation programmes were necessary in order to reduce the underground economy and

therefore benefit both migrants (by improving their working and living conditions) and Spanish society (through more taxes and social security contributions).

Most regularisations required conditions of residency and work to be fulfilled. While residence was normally demonstrated through registration in the municipality (known as *Padrón Municipal de Habitantes*), in 2000 and 2001, passport entry stamps, boarding tickets, utility bills and other similar documents could also be used for this purpose. In 2005, following a number of demonstrations in Barcelona and Madrid, seven other documents (e.g. official health cards, expulsion orders, rejected registration applications, asylum applications) were also deemed applicable for registration 'by omission'. Exceptionally, a special programme was launched in 1996 to regularise those migrants who had fallen back into irregularity. In this case, potential regularised migrants had to prove that they had been in possession of an earlier residence or work permit. Finally, labour requirements were also instated through some regularisation programmes (in 1986, 1991 and 2005), which, in practice, meant that only workers in the formal economy got regularised. Most noticeably, in the regularisation of 2005, eligibility was dependent on the prospect of a bona fide work contract of at least six months.

Although making immigration policies has always been the sole competence of the national authorities, regularisations may to a great extent be considered the product of bottom-up pressures. Concerned by the difficult situation of many irregular immigrants living in Spain, numerous NGOs, trade unions and other social activists have compelled governments to enforce such regularisations by, for example, exerting political pressure in Parliament. The underlying motivation for such petitions was to promote amnesty in the name of justice, though there was not always consensus on the ultimate goals at stake. In this regard, regularisations have often divided social movements. Depending on their expectations, immigrants themselves have cultivated a range of stances: from more moderate, collaboratively oriented positions to the more oppositional and radically defined.

Employers have generally taken a favourable position vis-à-vis regularisation processes. Among smaller companies especially, employers have been grateful for the opportunity to regularise the situation of many of their already employed irregular immigrants. Following the trend throughout Europe, Spanish trade unions have expressed worry about the possible negative impact immigrant workers might have on wages and employment opportunities for native workers, but they – much more than other actors – have demonstrated a positive attitude towards immigration and immigrants (Watts 1998; Calavita 2003; Cachon & Valles 2003). Trade unions have extended their services to immigrant workers, basically regarding them as potential new members through which to reinforce their social presence.

This stance may have something to do with the fact that Spain's dominant trade unions have traditionally had a left-wing political orientation. At the same time, it is also plausible that the remarkable expansion of the Spanish economy during the last decade and the importance of the country's black economy have encouraged the positive attitude among trade unions.

Finally, although some autonomous communities and municipalities have asked the central government to examine the prospect of opening regularisation processes, the role of regional and local authorities has been modest. Any participation on their part has mainly been motivated by the development of specific programmes for the social integration of immigrants, or as a result of pressure by social movements. Since 2000, autonomous communities have been key actors in the implementation of regularisation programmes. While the gradual decentralisation of regularisation programmes increased the state's administrative response capacity, it also introduced important regional differences in the evaluation of applications (Ramos Gallarín & Bazaga Fernández 2002).

5 Integration policies and policymaking

Telling the diffuse story of integration policymaking in Spain and the consequent involvement of different actors presents more challenges than describing immigration's well-centralised policies. Giving due attention to the various dimensions at stake in this analysis, we will first make some general remarks on the policymaking process and then outline its mechanisms. These mechanisms will be examined on three levels: the national; the local and regional; and from the perspective of non-governmental actors involved in both national and local policies.

As already discussed, up until to 2004, policymaking efforts at the national level primarily focused on the immigration field. The elaboration of integration policies mostly occurred on the regional and local levels for three reasons. Firstly, until 2004, Spain's management of migration in many ways resembled the guest-worker policies of Northern European states during the 1960s. Specifically, this means that a labour approach prevailed and the state's main preoccupation was immigration control and regulation, thereby relegating integration to second place. At the national level, policymaking in formal governmental and parliamentary arenas had basically taken shape in negotiations of the Foreigners Law.

Secondly, the sub-national level became the locus of integration policymaking as a consequence of the division of tasks between levels that the established system of autonomous communities. As we described in the third section of this chapter, while the national government manages immigration, sub-national governments have competence for promoting the accommodation of immigrants: regional and local governments are thus

responsible for the policy measures involved in integration (health care, education, social assistance, labour and housing).³⁰ The national policies for integration GRECO (2000) and PEGI (2006) would later institutionalise *de facto* distribution of responsibilities territorial tiers. This division of work no doubt had consequences for policymaking: namely, the difficult coordination between administrations and the heterogeneity of policies and processes.

More than anything else, this distribution of tasks in the elaboration of policies implies extreme separation between the policy fields of immigration and integration, and their respective networks and policymaking logics (Tamayo & Carrillo 2002). The two separate spheres follow divergent logics: the national government endeavours to restrict the entrance of migrants, while the autonomous communities and municipalities seek to make irregular migrants visible so as to develop policies that improve their living situation. Although the policy areas operate separately from one other, developments in the sphere of integration are hierarchically determined by those in migration. This helps explain how the three national plans for integration developed.

Parliamentary debates over the Foreigners Law have gradually come to deal with the negative ramifications it had for migrants' integration into society. In such debates, the 'integration of migrants' has become an ideological position in and of itself, eventually coming to oppose restrictive positions on migration (Moreno Fuentes 2004). This stance is harnessed by the view that integration policies embody 'the protection of human rights' or 'the defence of equal opportunities' – beliefs that have been promoted largely by social organisations.

Thirdly, integration policymaking in Spain has shifted out of the political arena and downwards to the sub-national levels. One important explanation for this shift is that Spanish political elites at the national level have shown little inclination to negotiate, while at the same time they are increasingly dependent on such negotiations between political forces to reach governing coalitions (Gomà & Subirats 1998; Gallego, Gomà & Subirats 2003). This tendency has been propelled ever since the polarisation of Spain's two major political parties in 2004, leading up to the present-day's political climate marked by division and great hostility. As such, policymaking at Spain's national level is complicated. When it comes to integration issues, the political agenda has become narrower in scope, while simultaneously undergoing shifts downwards, to the regional level, and outwards, to the administrative sphere.³¹

5.1 *National developments*

Although the principal activities of integration policymaking transpire at sub-national levels, the national level has witnessed three benchmarks in

policymaking: the Plan for Social Integration of Immigrants (1994), GRECO (2000) and PEGI (2006). These national policy initiatives have been triggered by bottom-up pressure exerted by sub-national public administrations (i.e. regions and municipalities) and civil society organisations. A significant amount of emulation has also taken place whereby policy concepts and models are patterned after the regional and local levels.

As demonstrated in this chapter's third section, the first generation of legislative initiatives in the 1980s dealt almost exclusively with the regulation of immigration itself, something that had been foremost defined as a temporary phenomenon. Spain's main motive for developing these initiatives was to secure imminent access to the European Economic Community, as opposed to any urgency, *per se*, of migration developments in the country. This explains the relative absence of societal actors in the process of creating these first-generation laws and regulations. Within such a framework, developing policy measures to facilitate immigrant settlement and the process of becoming a multicultural society could not be given political priority.³² The situation changed, however, in the 1990s. During this decade, more and more actors in Spanish society, particularly at the regional and the local levels, could face the consequences of a steadily growing immigrant population as well as the implications of its management. From the very start of the decade, societal action and political mobilisation pressed for immigration regulations that would create a better basis for integration at the local level (e.g. regularisations and rights for family reunification and for minors). This did, in fact, lead to a number of changes during the mid-1990s, and it also pressured the government to formulate an explicit integration policy. A crucial event was the signing of the Declaration of Girona by a number of civil society organisations in 1992. This document backed the statement that public administrations should develop a comprehensive integration policy, beyond a mere contention of problems. It also acknowledged the need for giving specialised attention to immigrants.

This societal insistence led to the Plan for Social Integration of Immigrants, as launched in 1994 by the Ministry of Social Affairs. Despite being a response to pressure from the grass-roots level, the plan was produced in Spain's administrative arena without any political or social debate. Furthermore, several authors suggest that this plan was inspired by – if not patterned upon – the 1993 Catalan Plan (Cais 2004; Zapata-Barrero 2002). Following in Catalonia's footsteps, the national plan showed striking similarities to the former plan in its institutional structure, particularly in terms of instruments promoting interdepartmental cooperation and social participation (e.g. the Forum).

In the formal sense, integration policies were introduced at the national level, a novel development. But, in practice, the importance of the 1994 plan was something more symbolic, acknowledging for the first time that

'integration' was a policy goal (Pajares 2004). The plan, however, led to meagre results, which were not only due to the scarcity of allocated resources, but also difficulties in coordinating the multiplicities of institutions involved. As evaluation by the Ministry of Labour and Social Issues (IMSERSO 1998) concluded, Spain's first attempt to promote its integration of immigrants was little more than a rhetorical effort; there were mismatches between the plan's intended goals and the economic, administrative and human resources actually available. Moreover, the various institutions involved held contradictory opinions on the issue. The clashing views of the Ministry of Interior Affairs and the Ministry of Labour and Social Affairs are a case in point (Gil Araujo 2002).

The new national regulation known as GRECO was launched in 2000. Once again, the plan was designed by civil servants behind closed doors in the Ministry of Interior. GRECO focused mostly on border control, with only one of its four guidelines dealing with integration. The plan's arguments follow that good management of migration in Spain means restricting the number of labour migrants so that national labour offers match demands for foreign work. Two key measures for accomplishing this are the strict control of flows and the promotion of migrants' return to their country of origin. The plan did not establish concrete measures or guidelines for sub-national actors, and neither was it backed by any specific allocation of financial resources (Pajares 2004). GRECO emerged in an extremely thorny historical context. The period was benchmarked by the progressive Foreigners Law 4/2000's reformation into its more restrictive 8/2000 version, 2001's regularisation process, national and regional elections and several mobilisations among citizens from both pro-migrant and anti-migrant sides. Transferring the immigration portfolio to the Ministry of Interior was another sign of the paradigm shift brought about by the PP government. Integration was not their first priority, and this was reflected not only in the policy's two main rationales but also in the actual expenses reflected in the annual reports (Delegación de Gobierno para la Extranjería y la Inmigración 2002).³³ It is not farfetched to conclude thus that, in this case, integration was a political goal only to the extent that it contributed to immigrants' return to their home countries. And, moreover, it helped maintain the status quo of a restrictive immigration policy.

Finally, 2004 saw production of the first real national framework policy for the promotion of integration. Increasing social pressures and the topic's gradual politicisation upped integration policy on a national political agenda being developed by the new social-democratic government. Promoting equality of immigrants nationwide was the main goal of the ambitious PECE 2006. For the first time, these national guidelines were backed by financial commitment – an allotted budget in which € 2,005 million were set for 2007-2010. The funding was to be proportionately distributed among the regions according to their immigrant population percentages as

well as among the municipalities, for the first time thus recognising the important role of local authorities. In addition, the national integration budget sanctioned those regional policies that complied with national guidelines, although autonomous communities could still cultivate their own integration policy.

There are notable differences in these consecutive national plans and the actors who subsequently participated in their elaborations. While all three plans share a technocratic policymaking style that lacks much parliamentary discussion between parties, PECE stands out for having a relatively pro-participation nature. PECE was drafted by independently operating specialists who had also considered recommendations produced by several expert seminars. Although regional and local authorities and civil society were not included in the discussions leading to its drafting, the plan was subsequently subjected to widespread consultation.

5.2 *Regional and local developments*

The description thus far detailing the evolution of integration policies at the national level can sometimes overshadow some of the earliest developments that took place at the regional and the local levels. But policy initiatives and negotiations among their different actors had been taking place in this realm since the mid-1990s (FEMP 1995; Maluquer 1997; Nadal, Oliveres & Alegre 2003). The region of Catalonia, in particular, was a pioneer, having developed the first regional plan for integration in 1993. Other regions launched their own policies more recently, in 2000 or 2001. They include Madrid, Andalucía, Baleares, Canarias, Navarra and Aragón, all of which have high migrant percentages. Already in the mid-1990s, a number of municipalities were launching policies, only to become more widespread at the turn of the millennium. In addition, some municipalities and social organisations such as NGOs, trade unions and migrant associations came to proactively promote the issue on the national political agenda (Casey 1998b; Agrela Romero & Gil Araujo 2005).

In the absence of a guiding national policy, regional and local authorities regularly took initiatives to develop integration plans. This has resulted in great variety in the form, content, involvement of relevant actors and implementation of local and regional policies. Above all, diversity in policy-making processes has led to considerable inequalities across regions and cities (Diez Bueso 2003), particularly since more empowered autonomous communities tend to develop their own policies while others do not. As a result, an immigrant's place of residence has a direct bearing on his or her access to welfare services (Martínez de Lizarrondo 2006). It is commonly assumed that this only exacerbates the uneven geographical distribution of immigration, for populations tend to move to regions and localities that will offer more favourable conditions.³⁴ The inconsistencies may also

create tensions between administrations concerning who has to foot the bill for the integration. The Catalanian Plan, for instance, lacked a clear financial budget because according to Catalanian policymakers, the central state was responsible for funding integration policies (Pajares 2004).

Despite the differences, regional and local policymaking processes also show important similarities. Firstly, when it comes to actual policy content, there are striking resemblances among regional plans' general principles and goals (Martínez de Lizarrondo 2006). Basic principles framing regional policies are equal rights and opportunities for migrants, normalisation (or the tendency to resort to general policies), transversality, gender equality, decentralisation and social participation (Pajares 2004). An important feature shared by both regional and local levels is that they seldom distinguish between regular and irregular migrants. If and when they do, however, the distinction tends to vanish upon policy implementation.³⁵ This has had implications for the policymaking process, particularly because not distinguishing between legal and illegal³⁶ immigrants in fact promotes the registration of irregular migrants in municipal registers. This identification works as the onset of a sort of partial regularisation process.³⁷ Sub-national governments 'survive' by making irregular migrants visible; this allows them to develop policies and services for migrants and to negotiate fiscal compensations with the central government (Tamayo & Carrillo 2002). Still, despite this general tendency, the legal status of migrants implies different levels of access to social-protection schemes depending on region or municipality. In some regions, undocumented migrants are often channelled towards special charity programmes supplied by private agencies and NGOs, although *de jure* they should have access to the general social schemes as long as they are listed in the municipal register (Agrela Romero & Gil Araujo 2005).

Secondly, we find similarities regarding decision-making styles. Regional and local plans have tended to be reactive in nature, focusing on preventing serious problems (marginality, violence, insecurity, exploitation, etc.). Analysis of the type of integration instruments developed shows how such actions have mainly taken place in first reception services and the social services sector (Tamayo & Carrillo 2002; Bruquetas-Callejo 2007; Martínez de Lizarrondo 2006). These priorities can be explained by the fact that sub-national actors have little influence over the growth of immigrant populations in their territory. Sub-national governments experience the direct consequences of this growth, yet they lack the resources and technical capacity to handle them. Inaction by some regional governments overloads the local authorities with responsibility.

Regional and local policies can generally be characterised as technocratic in their development, being designed behind closed doors by civil servants and internal experts. As such, there is little political discussion and negotiation between actors. A minority of regions (e.g. Navarra) has

managed to cultivate greater interaction among independent experts,³⁸ civil society actors and immigrants themselves. The dominance of policymaking in the administrative arena has led to plans often contradicting the political intentions and goals of the political elites in power. For example, the Catalonia Plan (1993, 1998), wove a symbolic banner for multiculturalism and yet still deployed instruments promoting the importance of the Catalan language and culture vis-à-vis immigrant integration (Cais 2004).

Despite the predominance of civil servants as actors, regions reflect a great diversity of policy actors involved in the decision-making network. Zapata-Barrero (2003a) has made a quantitative effort to describe different networks operating per region. He found that, while in some regions public administration clearly dominates the process (e.g. Andalusia), in others, pressure groups play the most important role, followed by NGOs and immigrant organisations (e.g. Catalonia, where public administration modestly figures at third place). Under the category of 'interest groups', Zapata-Barrero includes trade unions, religious organisations, employer organisations, federations and foundations.

Thirdly, within the dimension of implementation, the networks of actors involved varies not only per locality, but also policy sector. Whereas in some sectors (e.g. education) there is an obvious predominance of public actors and residual participation by private and social actors, other sectors (e.g. social services) have management networks largely linking the regional administration and the civil society actors. At the other end of the spectrum are examples of bottom-up experiences at the regional and local levels. For instance, Catalonia has had cases of self-organisation among citizens that have produced compelling policymaking initiatives and networks (Pascual 1997; Morén-Alegret 2002a, 2002b).

However, there is evidently a dominant national pattern in which a majority of autonomous communities have made first reception a top priority and thus assigned integration management to the Social Services Department (Martínez de Lizarrondo 2006). These autonomous communities transfer part of their responsibilities for first reception to NGOs and other social actors, who function as subsidised policy implementers. In their study on the Community of Madrid, Tamayo and Carrillo (2002) described such a network of actors – comprising the regional administration and non-governmental actors – whose relations are based on two basic instruments: the system of conditioned subventions and the contracts for service delivery. The Centros de Atención Social a Inmigrantes (CASI) network in Madrid and the Service for Attention to Immigrants and Refugees (SAEIR) in Barcelona are illustrations of how the management of social issues was transferred from the regional government to NGOs and private companies (Gil Araújo 2004; Bruquetas-Callejo 2007).

5.3 *Civil society*

Actors from Spanish civil society³⁹ have had a remarkable presence in the domain of integration policies. First of all, they have been the frontline providers of basic services for immigrants since the very beginning of their settlement in Spain, during the mid-1980s. Beyond purely implementing regional or local policies, social organisations formulate their own projects and seek the subsidies of public authorities. These actors have delivered a broad array of services, including juridical support, reception facilities, language training, employment services, health care, child after-school programmes, adult education and home rental intermediation. In addition, as mentioned earlier, these actors have actually tried to influence policymaking by explicitly demanding that public administrations develop integration schemes. Their efforts have had at least two visible results: placing immigrant integration on the political agenda (Girona Report, CAONGCG 1992) and swaying public opinion to favour migrants and support the granting of equal rights to foreigners on grounds of residence (in particular, the right to benefit from welfare state provisions). In a noticeable way, this has framed the issue of integration in terms of human rights and equal opportunities for migrants.

Nonetheless, civil society organisations have not had a substantial influence on the decision-making processes of integration policies in formal arenas. Casey (1998a, 1998c) concludes that, until the mid-1990s, Spanish NGOs had not yet been able to establish themselves as strong, independent actors in policy processes related to immigration and integration. Yet, their indirect role was crucial for pushing the issue on the political agenda and influencing how a particular problem might be defined. Public authorities also came to recognise the legitimacy that social actors had in the policy domain because of their access to migrant groups. While public measures primarily apply general schemes, authorities have found it useful to arrange special measures for immigrants through social organisations (Agrela Romero & Gil Araujo 2005; Dietz 2000).

There are three main factors that explain why participation by social organisations has merely remained indirect and variable, not reaching a more structured position in the decision-making process. We identify the inefficiency of the instruments developed for the participation of social actors (e.g. the Forum), the strong financial dependence social organisations have on public administration and the lack of coordination among social organisations. As mentioned above, social actors such as NGOs and immigrant associations have often been given specific tasks (and budgets) to implement integration policies at the local and regional levels. This delegation changed the position of such partners vis-à-vis administrative and political authorities and, to a certain extent, may have altered their very nature. Many organisations that initially consisted almost exclusively of volunteers

now have a significant percentage of contracted personnel in order to provide services that are subcontracted or promoted by public administration. In many cases, this has meant that both the voluntary nature and ideological impetus of NGOs take a backseat. Moreover, such organisations have become very economically dependent on public administration.⁴⁰

6 Conclusions

Spanish policymaking in the fields of immigration and integration presents several salient features. Fundamental is a separation of the policymaking system into the two distinct subsystems of immigration and integration. Although in other countries one policymaking model predominates (at least for certain periods of time), in Spain, a bipolar model prevails. Pressure to link these two fields has been mounting since the mid-1990s. One sign of this is the demand some autonomous communities make for obtaining competence in migration. The demand has been backed by the argument that, without such responsibilities, regions cannot produce effective integration policies. However, the path towards greater interdependence between the two fields has not evolved into a single, unique model. As such, the immigration and integration policy subsystems still function highly independently. Each field has its own predominating operational logic and accompanying set of actors that participate in decision-making processes.

The distribution of responsibilities within the autonomous community system means that in each field distinct actors and different levels of authority take responsibility for formulating policies. This governance pattern thus entails dissimilar policymaking strategies. As for immigration, the national government has had total responsibility over the related decision-making, and policymaking has consequently followed a distinct top-down direction. In the field of integration, the Spanish central government had until only recently been reluctant to dedicate significant efforts to integration policies. Decentralisation of social policies has assigned integration responsibilities to the regions and municipalities. Bottom-up responses have thus been extraordinarily diverse when compared across autonomous communities, municipalities and civil society organisations.

Another difference between the two policymaking subsystems is the degree of continuity. While the field of migration is characterised by relative continuity, integration is quite the opposite. Interventions in immigration policy have proven considerably consistent over time and throughout political changes because the field has been dominated by a single actor – namely, the central state. The policy style predominating Spanish politics also helps account for the degree of continuity in each subsystem: political elites are described as residing in a position somewhere between little inclination to negotiate between parties and the need to do so for the sake of

reaching governing coalitions. In the latter instance, changes in immigration policy have often been approached through modification of an implementing regulation, as opposed to substitution with a brand-new one. The consistency of migration policy may also be explained by the fact that Spain's main political parties (the PSOE and the PP) have had rather similar approaches. By contrast, stances on integration have been dissimilar – if not altogether conflicting – particularly on the issue of access to welfare services for irregular immigrants. In this regard, political colour seems a viable variable, running the gamut of positions within the field of integration. Since integration policies imply more political conflict between political parties, they have been regionalised and localised, as well as mostly approached through administrative regulations.

The subsystems have also been receptive to dissimilar contextual factors in the framing of policies. When it comes to immigration, the EU has played a leading role in initiating policymaking. These efforts were undertaken before immigration had even become a significant phenomenon and, later, in response to pressure to conform with general EU rules and principles. As for integration, grass-roots organisations and local authorities have created bottom-up pressure to trigger policymaking from below. The immigration/integration issue came to be defined in a highly politicised climate. It was shaped by several political mobilisations that were both pro and against migrants (such as racist events in El Ejido and Can Anglada and mobilisations of irregular migrants demanding residence and work permits in Barcelona and other major cities). The balance that developed between these forces can be read from the different versions of the Foreigners Law: while in the first and third versions of the law (8/2000) a European-wide top-down pressure dominated, the second version (4/2000) tried to introduce the logic of integration and to respond to the specificity of local needs.

These general tendencies, as they evolved over the years, need to be viewed in a nuanced light. Two elements should be noted in particular. First, although the domains are seen as distinct, the attention immigration gets undoubtedly dominates that given to integration. As such, the policy goals of the former have priority over those of the latter. The heavy emphasis on labour explains not only the chronology of integration policies, but also their reactionary character and primary focus on first reception. Second, within the field of immigration, social actors have put bottom-up pressure on regional and local governments to produce regularisations. Since regularisation has come to represent the primary avenue for conferring legal status, we deduce that immigration policies have, in practice, gone far beyond national authorities' competence.

Finally, this policymaking pattern has revealed inconsistencies. More than anything else, exceedingly separate relations between policy actors have produced two fundamental paradoxes. The first is that the model

lacks inter-governmental instruments that can guarantee the coherence of policies. Each domain operates independently and the facilities meant to integrate these two policy areas (government delegation, Institute of Migrations and Social Services, the Forum and the Superior Council for Migration Policy) have proved insufficient. Furthermore, the regionalisation and localisation of integration policies has been implemented without sufficient coordination between administrations and sectors. An absence of multilevel cooperation reflects a broad problematic within the system of the Spanish autonomous communities. The state has established a very decentralised power structure without resolving the articulation of the whole system in a satisfactory way (Aja 1999).

The second paradox is that even though organised civil society has no formal access to decision-making forums, civil society organisations have brought integration policy to fruition, both informally and at the operative level. Public authorities have even mimicked these civic initiatives. Up until recently, the framing of policies at the national level has tended to produce measures in immigration, rather than integration. This opened up opportunities for social organisations to generate a number of integration-related initiatives on all levels. A lack of receptivity towards stakeholders and civil society and a lack of coordination among social organisations has nonetheless stymied the potential impact such actors could have on policymaking.

Notes

- 1 Unless specified otherwise, the terms 'immigration' and 'immigrant' are used in reference to non-Spanish migrants.
- 2 On 1 January 2007, National Institute of Statistics (INE) data accounted for 45,200,737 inhabitants of Spain (<http://www.ine.es>); among this population were 4,519,554 foreign residents, or 9.99 per cent of the total population (not including immigrants who acquired Spanish nationality).
- 3 Ley 7/1985, *Orgánica de Derechos y Libertades de los Extranjeros en España* (Organic Law of Rights and Freedoms of Foreigners in Spain) of 1 July 1985.
- 4 Ley 5/1984, *Reguladora del Derecho de Asilo y de la Condición de Refugiado* (Law Regulating the Right to Asylum and the Condition of the Refugee) of 26 March 1984.
- 5 *Reglamento de desarrollo*. A regulation is a form of secondary legislation used to implement a primary piece of legislation appropriately.
- 6 Royal Decree 19 November 1986.
- 7 Real Decreto 766/1992, *Sobre Entrada y Permanencia en España de Nacionales de Estados Miembros de las Comunidades Europeas* (Royal Decree on Entry and Residence of Citizens of the Member States of the European Communities) of 26 June 1986.
- 8 Judgment of the Constitutional Court of 23 November 1984.
- 9 Judgment of the Constitutional Court of 7 July 1987.

- 10 Although there was no general prohibition, the exertion of these rights by foreigners needed prior authorisation by public authorities. This provoked a *de facto* limitation on the right of association as well as the right to meet.
- 11 Izquierda Unida.
- 12 Partido Socialista Obrero Español.
- 13 Law 9/1994 of 19 May 1994.
- 14 Royal Decree 203/1995 of 10 February 1995.
- 15 Royal Decree 155/1996 of 2 February 1996.
- 16 The Forum's current status is regulated in Royal Decree 367/2001 of 4 April 2001.
- 17 The national policies for integration (GRECO (2000) and PEGI (2006)) have institutionalised a *de facto* distribution of tasks.
- 18 Some of these responsibilities are shared with the local administrations.
- 19 Law 4/2000 of 11 January 2000.
- 20 Partido Popular.
- 21 For the period 1996-2000, the PP was in power with just a relative majority.
- 22 Law 8/2000 of 22 December 2000.
- 23 Royal Decree 864/2001 of 20 July 2001.
- 24 Its application spanned the period 2000-2004.
- 25 Law 14/2003 of 20 November 2003.
- 26 Judgments of the Constitutional Court number 236 of 7 November 2007 and number 259 of 19 December 2007.
- 27 Royal Decree 2393/2004 of 30 December 2004.
- 28 The 1990s also saw specific regularisation programmes implemented to solve confrontational situations in the border cities of Ceuta and Melilla. These programmes permitted irregular migrants to get a one-year residence permit without having to undergo the standard process. In exchange, the government required active collaboration from NGOs who would see to it that immigrants could move to the peninsula. There they were to be granted some basic reception provisions, a gesture meant to counterbalance the negative impact of their irregular arrival.
- 29 On 3 January 2001, in the Murcian city of Lorca, twelve Ecuadorian migrants on their way to work were killed when their van was hit by a train. Widely covered by regional and national media, the event brought attention to the workers' living and labour conditions, thus publicising the precarious situation of many migrants in Spain.
- 30 Some of these responsibilities are shared with the local administrations.
- 31 The confrontation between the party in power (the moderate social-democratic PSOE) and the opposition's main party (the conservative PP) has compelled the government to minimise the number of issues on the political agenda. As an energy-saving strategy, points of conflict thus become very focused, while many other issues get delegated to bureaucrats so as to reduce general political confrontation.
- 32 This is also reflected in research: studies dealing with the elaboration processes of integration policy are rather scarce (Tamayo & Carrillo 2002; Zapata 2002c, 2003; Ramos et al. 1998), while studies dealing with immigration policy are more common (Tamayo & Delgado 1998; Carrillo & Delgado 1998; Ramos & Bazaga 2002; Goma & Subirats 1996; Lopez Sala 2005). Few studies deal with both policy fields (Casey 1998; Agrela Romero & Gil Araujo 2005).
- 33 The 2002 Report of the Delegation of Government for Alien Policy and Immigration declares an expenditure of € 252 million on border control, centres of reclusion and services for asylum seekers and foreigners. In contrast, investments in integration are considerably less: € 9 million for the covenants with regions; € 12.6 million for subventions to social organisations offering services to migrants; and sundry funds given to refugee and immigrant reception centres.

- 34 However, evidence in this regard is inconclusive. See general discussions on the Welfare Magnet Theory.
- 35 According to Martínez de Lizarrondo (2006), Madrid is the only region that formally excludes irregular migrants from public (specialised) services. However, Tamayo and Carrillo (2002) aver that this policy gets blurred in practice.
- 36 Throughout this chapter, the terms 'irregular', 'illegal' and 'undocumented' are used synonymously when referring to migrants.
- 37 As Solanes Corella (2004) observes, the municipal register is a double-edged sword. Local governments, in collaboration with regional ones, tend to use it as a mechanism of inclusion – by extending service access to all undocumented foreigners who register as residents (as sanctioned by law 4/2000) – rather than as an instrument of control – by trying to protect registry data from police access (as permitted by law 8/2000).
- 38 The formulation of policies by public officers often implies that experts within the administration develop measures. Some regions have developed public services that specialise in supporting local authorities in the elaboration of integration policies (for instance, CRID in Catalonia).
- 39 One basic typology of civil society organisations distinguishes between Spanish NGOs supporting immigrants and associations of immigrants (Casey 1998). The former focus on delivering services for migrants, while the latter tend to take up political representation duties in public institutions. Since the former task list implicates more resources and thus more influence than the latter, tensions are likely to arise among the various social actors (Tamayo & Carrillo 2002). Other immigrant-supporting organisations include trade unions, cultural associations and spontaneously formed groups that mobilise for specific migrant causes.
- 40 Ruiz Vieitez (2003: 186) highlights four additional changes that may take place within such organisations: diminishment of a long-term strategy; influence by personal or practical interests within the organisation; loss of a culture of inter-organisational coordination and networking; and a weakening international presence.

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PART III

EASTERN EUROPEAN COUNTRIES

9 The case of the Czech Republic

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1 Introduction¹

The area that now constitutes the Czech Republic was, over the last centuries, characterised more by the phenomenon of emigration than by processes of immigration. Between 1850 and 1914, the territory of the Czech Lands experienced a net emigration of about 1.6 million inhabitants (Drbohlav 2004). The Czech Lands came to be characterised by more substantial immigration at the end of the twentieth century with the exception of return migration after 1918 and 1945. Before then, Czech emigration was mainly directed to other parts of the Austro-Hungarian Empire, as well as to the United States and Canada. Migrants' main motives were to seek work and a better quality of life. While these socio-economic factors were crucial for Czech emigration history before World War II, the situation changed at the end of the 1930s. At that time, political factors were gaining significance, causing mass migration movements across the whole of Europe. After phases of emigration and immigration among displaced persons, the post-war period was characterised by expulsions. Between 1945 and 1946, in response to World War II, nearly the entire German minority of Czechoslovakia – comprising about 2.7 million people – was exiled to Germany and Austria. These movements led to both planned and unplanned migration that would repopulate the area and provide workers for the national economy (e.g. in heavy industry, agriculture and forestry). Furthermore, it transformed the Czech part of Czechoslovakia into a fairly homogenous society in terms of ethnic groups: 94 per cent of the population at that time was Czech.

During the Communist era, during which some 420,000 to 440,000 people left the country between 1948 and 1990, some immigration occurred. This flow was mainly facilitated by agreements regarding temporary workers, drawn up with other socialist countries such as Poland and Hungary. These 'guest workers' were hired under so-called 'international aid cooperation' (Boušková 1998; Drbohlav 2004). Apart from agreements with neighbouring countries, bilateral agreements were signed throughout the 1970s and 1980s with more distant places, such as Vietnam, Mongolia, Angola, North Korea, the Republic of Cyprus, Laos and Cuba. This migration scheme was strictly regulated and involved workers, interns and

students (Boušková 1998). The migrants were usually segregated and hardly visible. Permanent immigration into the country at that time, though, was rather marginal and usually politically motivated (Drbohlav 2004). Unlike other Czechoslovakian migrant workers in the 1990s, immigrants from Vietnam tended towards *de facto* settlement in the country. This happened despite cancellation of the bilateral agreement and the Czechoslovakian assistance programme meant to provide new jobs for returnees from Czechoslovakia to Vietnam (see Boušková 1998).

The most substantial immigration to Czechoslovakia (or, as of 1993, the Czech Republic) only started after 1989. This was a consequence of the Communist regime's collapse, the country's gradual inclusion in a globalised capitalist economy and the better economic position of the Czech Republic compared with other Eastern European countries. In order to understand post-1989 immigration into the country, we need to look at the Czech history of political, social and cultural ties to countries such as Slovakia, Ukraine, Poland, Vietnam, Mongolia and Russia. As former socialist allies, they represented particularly important ties for contemporary migrations dating back to earlier periods, such as Transcarpathian Ukraine, which was part of Czechoslovakia in the interwar period. Among the aforementioned countries, migration from Slovakia must be considered separately, since Slovak citizens suddenly went from being 'internal' to 'international' migrants with Czechoslovakia's split in 1993. It has, however, remained a specific kind of migration as Slovaks have continued to be considered 'not-yet foreigners'² (Čaněk 2004). In this sense, no work permit was required from Slovak citizens before either the Czech Republic or the Slovak Republic entered the European Union. Yet at the same time, Slovaks were counted as foreigners in statistics.

Besides migration from the East, there has also been migration from the West (e.g. the US and Western Europe), already visible from the first half of the 1990s (see Wallace & Stola 2001). With the 1989 opening of borders to the West and its relative economic and political stability, the Czech Republic became a destination of transit from the East to the more affluent West. Increasingly, the country itself became a destination for immigration: in only four years, the number of foreigners registered as long-term or permanent residents rose fourfold from 49,957 in 1992 to 199,152 in 1996. Legal immigration slowed down in 2000, but since then has continued to grow. In 2008, the official figure was double the number of foreigners in 1996. At the end of 2008, the country had 438,301 registered foreigners, 265,374 of whom were long-term stayers (i.e. holders of visas valid for over 90 days, other long-term residents and holders of temporary residence permits) and 172,927 permanent stayers (holders of permanent residence permits). With, according to the statistics, 10,467,542 people living in the Czech Republic at the end of 2008, 4.19 per cent of the overall population were thus migrants. Based on figures provided by the Alien and Border

Police, most migrants in the Czech Republic as of 31 December 2008 were Ukrainian citizens (131,965), followed by Slovaks (76,034) and Vietnamese (60,258). Labour statistics, however, provide a different picture. As for being employed or self-employed in the Czech Republic at the end of 2008, first came Slovaks (109,478) and then Ukrainians (102,285) (Horáková 2009). These statistics as well as data concerning criminality³ point to different regimes for EU and non-EU citizens, as many of the former do not register with the Alien and Border Police.

Integration of the Czech Republic into the international economy and the rise of the competition state (Drahokoupil 2009) are crucial factors explaining growing labour immigration and migration policy liberalisations. The interests of major foreign investors and employers, especially as represented by the Czech Republic's Confederation of Industry, have played an important role in facilitating both manual and skilled labour. This reflects a more general convergence towards the competition state (Menz 2009). The international economic crisis starting in autumn 2008 slowed down immigration to the Czech Republic and reshaped the balance of social forces influencing immigration policies. Gaining power have been those parts of administration dealing with security issues and protecting domestic labour from competition with foreign workers.

This chapter attempts to describe the mechanisms of migration policy-making in the Czech Republic. It is mainly based on the study of existing literature, policy documents and legislation as well as on first-hand experience and informal interviews with migration policy actors.⁴ It focuses primarily on the developments of the Foreigners Act, thus only minimally dealing with issues such as asylum and the Asylum Act.

2 The evolution of migration policies: General trends

Before Czechoslovakia's historic turning point in 1989, Czech state institutions were predominantly interested in controlling emigration. In the former Czechoslovakia, numbers of foreigners were, by today's standards, lower. The 1965 Act on the Stay of Foreigners on the Territory of the Czech Socialist Republic⁵ only vaguely covered the granting of residence permits to foreigners. Baršová and Barša (2005) note that Czech migration policies in the 1990s developed because the country, as a type of liberal and post-revolutionary state, had no prior experience handling the immigration of individual migrants. It can be said that the Czech Republic, its politicians, institutions and the public were largely unprepared to deal with migration issues after 1989. In the mid-1990s, the Czech administration and politicians were taken by surprise, realising that the immigrant population had risen fourfold in just a few years. Such awareness significantly influenced the formulation of Czech migration policy, and will be

investigated in detail in the following section. One particular aspect should be highlighted to better understand the country's political and societal development: continuity of migration policies in the Czech Republic was largely ensured by institutions. The Ministry of Interior and the police forces remained the central authorities governing entry and stay before and after 1989.

In general, the democratisation and liberalisation of the Czech political and economic systems from 1989 onwards led to the relatively free movement of people. *Laissez-faire* migration legislation and practices (Baršová & Barša 2005), as well as prospering economic relations, favoured immigration to the Czech Republic in the mid-1990s.

3 Migration policymaking from the 1990s onwards

Czech migration policy – or rather, policies – developed in the context of rising, diversifying immigration, the process of integration into the EU and a relatively low politicisation of the issue. The management of migration flows and the direction of respective policies were shaped mainly by high-level Czech administration and business interests, as well as migrant networks and intermediaries. In this context, the acting administration and politicians did, to some extent, respond to public concerns and fears regarding the presence of foreigners, as testified to the 1999 Foreigners Act. The aim of this law was to restrict immigration. Since then, more positive views of migration have taken hold, with the utilitarian argument being fed by the perception of economic and demographic needs. There has been substantial legal (but also undocumented) labour migration (in construction, the car and mechanic industry, agriculture and the service sector), which until recently coexisted with a relatively high unemployment rate among Czech citizens.

Favell (2002) states that the evolution of migration policies in the period post-1989 can be seen as a gradual inclusionary process into Western Europe and exclusion from – or of – the East. Eastern European migrants from the former Soviet Union and Balkan countries have been understood as a legacy of the past. These flows were defined as problematic, possibly 'less civilised' and connected with organised or petty crime and undocumented labour, not to mention associated with low social prestige. Conditions and obstacles to their movement and settlement were gradually introduced, justified by the necessity to align migration policy with that of the EU. After the introduction of the 1999 Foreigners Act, it was no longer possible to establish residence status from a short-term visa, and in 2000 and 2001, entry visas for citizens of the former Soviet Union were introduced. In doing this, the state tried to reclaim control of immigration. In the explanatory report to the 1999 Foreigners Act, it was stated that the

law could prevent a potential growth in xenophobia among ethnic Czechs by limiting immigration to a certain 'absorption capacity' with regards to the number of foreigners in the country (Ministerstvo vnitra 2000). At the same time, the human rights dimension of migrants' presence in the country grew in importance, coming to the fore above all in the context of the amendments to the 1999 Foreigners Act.

3.1 *Legal provisions*

During the first half of the 1990s, some important bills on migration issues were enacted, among those the Refugee Act no. 498/1990 Coll. and the Foreigners Act no. 123/1992 Coll. as well as readmission agreements and bilateral agreements on the employment of foreign nationals. The migration scheme set forth by the 1992 Foreigners Act was described as being 'liberal' compared to the regimes before and after: 'The act itself was based on the assumption that it was not necessary to regulate issues related to foreigners in a way that would dramatically differ from the general norms of administrative law' (Uhl 2005). Moreover, in the 1990s, the Czech Republic became a full member of the Geneva Convention and the 1967 Protocol. In 1999, it joined NATO and, as stated above, it became a full member of the EU on 1 May 2004.

The location of Czechoslovakia, later the Czech Republic, and its location along migration routes from East to West (e.g. to Austria and Germany) meant that it occupied a potentially strategic position for EU member states: the control of westward transit migration. In this context, the Czech government agreed upon a formal set of common principles for migration policy, which included control schemes and combating undocumented migration. The beginning of the 1990s saw an increased urgency in migration control first and foremost because the country was part of Europe. The Czech Republic itself, however, was not considered a country for migrants to settle permanently. A Ministry of Interior document from 1992 states: 'Uncontrolled migration flows may be an additional threat to the overall stability and harmonious development of relations among European nations' (Ministerstvo vnitra 1992). Although undocumented migration (especially transit) started to become an issue, largely discussed in bilateral and multilateral frameworks (e.g. the Budapest Process), immigration did not. Even if economic immigration to the Czech Republic started to grow, it went largely unnoticed by the Czech government and the public during the first half of the 1990s. At that time, special concern was dedicated to the political, economic and social transition of the country. There was little knowledge of de facto international immigration and its implications for the Czech Republic. One of the first studies in this area, on the case of Ukrainian labour migrants, was published in 1997 by Drbohlav.

Because migrant policy was at first only connected to the presence of specific groups, such as refugees and ethnic Czech migrants, a programme providing accommodation and language courses for refugees was set up in 1991. The programme addressed, above all, ethnic Czechs from Kazakhstan, Ukraine and other places⁶ (Bařšová & Bařša 2005). Due to insufficient accommodation and the housing market's high prices, the provision of living space for refugees and ethnic Czechs became a major concern. This was partly solved by housing asylum seekers and Czech migrants in former barracks of the Soviet Army, usually in remote and economically undeveloped areas. A dispersal policy was developed that distributed refugees to different municipalities all over the country.

With Employment Act no. 1/1991 and the Trade License Act of the same year, two basic provisions for legal economic migration were established. On the one hand, these acts introduced a complicated three-permit system for dependent migrant workers: a recruiting permit for the employer,⁷ a work permit for the employee and a residence permit for the employee. Under the Ministry of Labour and Social Affairs and its subordinated Labour Offices, the permits required for foreigners who wished to be employed were issued successively in separate administrative proceedings and entailed no legal entitlements. On the other hand, the acts established a relatively easy business registration procedure, administered by the Ministry of Industry and Trade and its subordinate trade license administrations in local municipalities. In reality, however, these categories were blurred and proved their substantial limitations. Throughout the second half of the 1990s, as Czech analysts point out, the trade license regime allowed for a shift from stricter work permits to more liberal trade licenses. This limited the control of labour immigration (Drbohlav 2004).

Only in the second half of the 1990s was there a marked tendency towards more immigration control. The shift was catalysed by an economic recession, rising unemployment rates among Czech citizens, the perception of foreigners being involved in criminal and illegal activities (organised crime, petty crime in tourist areas, illegal employment and residence) as well as some politicians' view that migration processes were – to put it simply – getting out of control. Discussed at that time was the introduction of visa obligations for countries of the former Soviet Union.⁸ In 1996, the Foreigners Act was amended to Act no. 156/1996 Coll., introducing restricted conditions for residence permits. However, this did not yet present a major change in immigration regime; it was more of a response to some practical lacunae reported by the Alien and Border Police⁹ (Bařšová 1996). In general, the challenge for the Czech nation-state was to make the transition from simply registering immigrants to controlling and possibly reducing their numbers. 'If we don't wish [the issue of foreigner] to overwhelm us, we should solve it in an appropriate way,' said the Minister of Interior in 1996, reflecting on the growing numbers of foreigners (MF Dnes

1996b). However, migration control did not seem a completely obvious matter in a newly democratic country and needed some justification. The annual migration overview of the Ministry of Interior from 1997 states: 'The right to free movement and to choose one's country of residence is no doubt part of a democratic society. Nevertheless, the state's right to determine numbers of immigrants, reasons and origin of immigration should not be questioned either' (Ministerstvo vnitra 1997).

In 1997, the Czech Republic became an EU accession country, heralding a number of modifications to developing Czech migration policy. Reaching EU standards in asylum and border and immigration control became a major concern. The term 'EU standards' is to be understood not only as the clear adoption of the dynamic EU *acquis*, but also of EU member states' actual practices with the aim of 'bringing migration flows under control' (European Commission 1997). In this context, several issues had to be addressed. Firstly, Czech legislation needed be harmonised with EU migration policy (as formulated by the Directorate-Generals for Justice and Home Affairs). Secondly, Czech institutions had to be reformed (the Alien and Border Police, in particular). And thirdly, the EU's pre-accession financial instrument known as Phare and twinning programmes had to be implemented.

The role of the Czech Republic in the externalisation of asylum seekers and undocumented migrants was strengthened towards the end of the 1990s (see Lavenex 2001). The 'safe country of origin' and 'safe third country' principles were included in the Czech Refugee Act in 1999. A more restrictive migration policy was pursued, with new legislation on the stay of foreigners and their economic activities, towards the end of the 1990s. The Czech Republic needed 'sufficient legal instruments to solve the issue of foreigners who "would not pass" through the filter of the member states of the Schengen Agreement' (Ministerstvo vnitra 2000). The Czech Republic's new Foreigners Act no. 326/1999 Coll. was created at a time when the realist policy frame prevailed in Europe (Lavenex 2001). As already mentioned, the previous 'liberal' law was considered exceptional in Europe, inefficient and unable to combat undocumented migration. In this context, the Czech Foreigners Act of 1999 played an important role, as it also catalogued countries considered potential basins for further irregular activities and migration (see Moore 2004).¹⁰ In fact, it introduced the requirement to apply for a long-term visa at a Czech embassy before entering the country. This was novel, as most migrants had previously applied for a visa/residence permit once they were already staying in the Czech Republic. The aim of such a remote control mechanism (Guiraudon 2001) was to limit undocumented migration into the Czech Republic and employment therein. Accordingly, in 2000, the visa regime was extended to people from Ukraine, Russia and other countries viewed as 'problematic'. Remote control was meant to limit the irregular employment of migrants, especially those from the former Soviet Union. An additional change in the

Employment Act (no. 167/1999 Coll.) made it clear that the ideal employment of immigrants should be temporary: access to an employment permit was restricted to a three-year maximum with a requisite one-year break before taking up a job in the Czech Republic again. This condition was, however, removed by the next amendment of Employment Act no. 155/2000 Coll.

By and large, the new Foreigners Act of 1999 reconfirmed the shift towards migration control policy, which was motivated by both internal and external factors. National sovereignty was to be reclaimed. The Foreigners Act followed compulsive EU entry requirements and was inspired by legislation passed by other countries such as Austria, Germany and France. As a consequence of these restrictive policy matters, the number of legal migrants entering the Czech Republic fell for the first time since the early 1990s.

The new Foreigners Act, however, also established a new group of immigrants who were granted the right to permanent settlement. It introduced the possibility of transferring from a long-term to a permanent residence status after a ten-year minimum stay in the country;¹¹ access to permanent residence was thus not excluded in cases of family reunification and other particular cases. Before this linkage, “long-term” [...] and “permanent” residency were two separate and unconnected streams’ (Baršová & Barša 2005: 223).

Not being able to legalise one’s stay – for example, converting from a tourist visa to a permanent visa due to economic reasons – was established by the 1999 Foreigners Act. It substantially affected Czech refugee policy. For some undocumented migrants present in the country, the only way to legalise their stay consisted of appealing for asylum. The ‘abuse’ of the refugee system, in turn, led to imposed restrictions in the Czech Refugee Act. Before then, however, the effects of the Foreigners Act could be seen in increased asylum applications, for example, from Ukraine (94 in 1999 compared to 1,145 in 2000).

Immigrant policies became a new activity for the Ministry of Interior in 1999. Before that, the Council of Europe inspired a National Round Table on Relations among Communities in 1998. A Commission of the Ministry of Interior was established to deal with the Integration of Foreigners and with Relations among Communities, and a grant scheme was introduced to support the activities of NGOs working in this area. In 2001, the Foreigners Act of 1999 – namely, passages of the law concerning immigrants’ rights – was amended in line with critiques from different national NGOs, the government’s human rights commissioner and the media. One aspect of the 1999 act that was criticised was its intrinsic promulgation of *tabula rasa*: any period of residence prior to the passing of the act was excluded from the requisite ten years for achieving permanent residence status. This idea was eventually rejected, as the 2001 amendment of the Foreigners Act reflects.

3.2 *Actors*

The basic structural division of responsibilities was set up almost immediately after the 1989 Velvet Revolution. Among the ministries in charge, the decisive role has always belonged to the Ministry of Interior and its subordinate bodies, e.g. the Alien and Border Police. This ministry acquired its authority under the 1990 Refugee Act¹² (in force as of 1 January 1991), which was the first act to establish an asylum system in Czechoslovakia. The Ministry of Interior founded a special refugee department, though authority to grant or withdraw refugee status was transferred to the Alien and Border Service of the federal police force.¹³ This model was also applied in other parts of migration administration: the Alien Police, as part of the police force, grants entry and residence permits, while civilian departments of the Ministry of Interior handle the conceptual and legislative work. The division of power between the two bodies has lasted though, during the past fifteen years, the ministry has gradually come to take over some of the police's decision-making authority. At the same time, the Directorate of the Alien and Border Police exercises a strong informal influence on the legislation.

Apart from the Ministry of Interior, three other ministries have had a strong say in regulations concerning migration issues. The main points of governmental migration policy have circulated among these. Firstly, the Ministry of Labour and Social Affairs is in charge of employment policy, and in the new 1991 Act on Employment, its Labour Offices were given the power to decide both on work permits for foreign employees and recruitment permits for employers. Secondly, the Ministry of Industry and Trade has authority with regards to the commercial activities of immigrants. The local trade offices, which issue trade licenses, are subordinated to this ministry. Two newly passed acts on commercial activity in 1992 have enabled foreigners to pursue commercial activity either on the grounds of a trade license issued almost automatically by the trade offices or through a business company registered in the commercial register run by the judiciary. The third main governmental stakeholder is the Ministry of Foreign Affairs, which is in charge of consular policy. Other state-controlled or administrative institutions include: customs offices, financial offices, social security offices and branches of the Czech Trade Inspectorate.

At the level of ministries, there has been one substantial change in the division of authority since 1989. In 2003-2004, the field of foreigners' integration was taken away from the Ministry of Interior and given to the Ministry of Labour and Social Affairs. This measure temporarily strengthened the latter's position vis-à-vis the former's, as did the initiative taken by the Ministry of Labour and Social Affairs in designing an active immigration policy (the aforementioned pilot project for the Selection of Qualified Foreign Workers). The project, along with granting authority

over immigrant policy coordination to the Ministry of Labour and Social Affairs, was described in terms of a diversification of viewpoints on immigration. The security perspective was to be partly replaced or complemented by social and economic aspects (see Baršová & Barša 2005; Drbohlav 2004).

There was, however, another change at the governmental level worth mentioning. The end of the 1990s marked a strengthening of the human rights' dimension in Czech migration policy. Whereas the right-wing governments in power until 1998 were seen as paying less attention to the protection of human rights, the new Social Democratic cabinet decided to create three human rights bodies that were not only interconnected in terms of the themes they addressed, but also shared personnel. The first was the Governmental Human Rights Representative, followed by a special Department for Human Rights subordinated to the Prime Minister's office as its staff and, lastly, the Council of the Government of the Czech Republic for Human Rights, which comprises representatives of human rights NGOs and is composed of several specialised committees. This reform also established a certain institutional basis for the protection of migrants' rights.¹⁴ The second important human rights institution to be created was the Public Defender of Rights (i.e. an ombudsman) with offices set up in Brno in 2001. The Public Defender of Rights is authorised to monitor functioning of the state administration and to collect information on behalf of individual complaints; oversight of the police agenda of foreigners' entry and residence is included here, too. The ombudsman himself is a former judge. A significant portion of his recruited staff are previous employees of human rights organisations. For the sake of migration policy, it is crucial for the ombudsman to have the right to participate in internal governmental legislative procedure and therefore be able to comment on drafts of acts. Together these institutions have contributed – from the human rights standpoint – to gradual improvements in migrants' rights and to a slightly more positive view of migration on the whole.

Though the judiciary had only played a minor role in migration policy-making, lately its role has grown. It can intervene in migration policy and in the field of administrative and constitutional jurisdiction. During the 1990s, the impact of the judicial review of the state's administrative acts (mainly those of the police and the Ministry of Interior) was rather modest, with only slight corrections to administrative practice in asylum matters and with regards to decisions on administrative expulsions of foreigners.¹⁵ Its greatest effects on migration legislation appear to pertain to two sentences passed by the Constitutional Court in 1998. The first judgement abolished the legal provision, which allowed for excessively wide grounds for implementing an administrative expulsion. The second one forbade the exclusion of some of these decisions from court review. The practical impact of these verdicts was predominantly greater precision in the terms of

provisions on expulsion in the 1999 Foreigners Act. The role of the judiciary started to grow, however, after the Supreme Administrative Court was established in 2003. First and foremost, this specialised court is more innovative and progressive (e.g. in naturalisation matters), and its work has gained much more respect than that of the Regional and Upper Courts before it. At the same time, the Supreme Administrative Court has been exercising influence on the legislation itself, partly by direct lobbying (in 2005, the president of the court himself initiated a restriction on asylum seekers' access to judicial review in the second instance, which was justified by the high number of asylum cases in that time) and partly by statements from some judges in the academic sphere. As for judicial review in general, its influence is limited by the fact that only a few foreigners actually bring their cases to court as they cannot afford to wait for a court decision and are therefore forced to comply with bureaucratic requirements (even if they are not based on law). Nevertheless, one can assume that the potential threat of a judicial review has prevented major extremes in state administration.

In the general Czech context, NGOs developed firstly as refugee-assisting organisations supported by UNHCR, and only subsequently as organisations assisting other groups of migrants. Some are tied to the migration policy process and implementation through various committees, and partake in formal and informal cooperation with governmental and other bodies. By means of subsidies, some of the NGOs have closer links with the Ministry of Interior or refugee facilities administration, and have played more of a service-provider role than performing advocacy work (Szczepaniková 2008). In general, the various ministerial departments have found it useful to engage in cooperation with NGOs when seeking practical information, such as partners claiming to represent migrants, the mobilisation of external supporters for specific policies or the aforementioned service providers. Attempts to build an umbrella organisation of migrant-related NGOs have generally failed. EU entry brought major changes for NGOs in terms of financing and cooperation with European partners. Only a few NGOs have had the capacity, resources or interest to follow the developments in European-wide migration policy and legislation – being, above all, those organisations that manage to network more effectively at the European level.

4 Migration policymaking in the contemporary Czech Republic

After the first legal steps were taken towards creating a migration policy, in the early 2000s the predominant 'security perspective' of Czech migration policy began to change (Drbohlav 2004; Baršová & Barša 2005).

Alternative views on migration emerged within state administration. On top of the human rights case, a utilitarian argument appeared. The latter favoured immigration to minimise the consequences of population ageing and the decline in birth rates throughout the country. In 2003, the basic 'Principles of policy in the area of migration of foreigners' formulated by the Czech government stated among its major aims not only that of combating undocumented migration, but emphasising how migration might be beneficial to the Czech state and society at large. The Ministry of Labour and Social Affairs initiated a permanent selective immigration pilot recruitment programme in 2001 (Resolution no. 975 of the Czech Government, 26 September 2001). Although the Czech Republic never applied a 'zero immigration policy', the decision to institute such a project partly reflects a general call in the EU to end the zero immigration policy and to introduce selective systems of immigration (see Hansen 2005). Arguments used to support establishment of the project included the notion of a future demographic crisis¹⁶ as well as of shortages on the labour market. The programme run by the Ministry of Labour and Social Affairs was inspired by the Quebec point system and was intended to encourage the settlement of migrants. This selective skilled immigration programme brought only a minimal number of migrants to the Czech Republic, though, at the same time, it became a symbol in the media for governmental acceptance of labour immigration.

It should be noted that there had been substantial demand for labour immigration within the domestic market (especially in booming areas such as Prague and Mladá Boleslav), which was deemed unable to satisfy employers and investors. The demand not only for skilled workers, but also (and mainly) for manual and low-skilled labour, was justified by Czech labour offices' concern over the 'social welfare system not offering sufficient motivation' for unemployed Czechs to seek work (Jíchová 2005). Later on, especially, the centre-right-wing coalition government in power from 2006 until 2009 used migrant economic activity and decreasing unemployment (up until 2008) as arguments to legitimise reform of the social welfare system; this, they believed, would 'motivate [unemployed Czechs] to accept jobs' (Nečas 2008).

At the same time, the Ministry of Labour and Social Affairs lost control over the habit of alleged company co-owners working as employees (see the Employment Act 435/2004). This was connected to the fact that Labour Offices could only control the issuing and functioning of work permits, and yet there were other legal forms through which legal labour migration was occurring. Since the second half of the 1990s, there have been critiques of incoherent Czech migration policy (see e.g. Drbohlav 2004). Such inconsistencies, however, seem to have been caused by more than simple lack of coordination between different ministries. Conflicts arose between the unrestricted freedom of business and the protection of Czech

citizens on the labour market. According to some views, the Ministry of Industry and Trade advocated the former, while the Ministry of Labour and Social Affairs advocated the latter. The economic boom following the country's entry into the EU led to a decrease in the rate of unemployment and greater employer demands for the importation of labour. The political decision to open the labour market to Bulgarian and Romanian citizens following the entry of Bulgaria and Romania into the EU was relatively unproblematic.

The Czech Republic joined the EU in 2004, which created a privileged category of EU migrants. There were no reciprocal restrictions implemented on citizens of EU countries where access to Czech citizens was denied. On the other hand, the category of 'third-country nationals' was created. However, as noted in the previous section, this was a gradual process. Both in the public's perception and in the actual practices of the Alien and Border Police, there was another category of migrant: the privileged, mainly unproblematic group of 'Westerners'. This category has included not only EU citizens but also, for example, US citizens whose often undocumented residence did not concern the authorities, unlike that of other groups of migrants. At the same time, it should be noted that the non-acceptability of migrants from certain countries was evolving. While in migration policy 'management' and plans, immigration from Ukraine, Belarus and other countries of the former Soviet Union evidently became acceptable or even welcome (see e.g. the inclusion of Ukraine among the countries accepted by the pilot recruitment programme discussed in section 4), immigration from Arab (i.e. Muslim)¹⁷ countries was not met with open arms.

In 2004, responsibility for the coordination of immigrant policies passed from the Ministry of Interior to the Ministry of Labour and Social Affairs, reflecting the socio-economic dimension of the integration process and a shift in the Czech migration policy paradigm. Work continued on the formalised concept of integration policy that was being updated and reviewed yearly. Stress has been put on the gradual acquisition of rights by migrants as well as on the acquisition of Czech language and basic civic knowledge¹⁸ (Bařšová & Bařša 2005). This reflected trends in the EU regarding the role of migrants in the 'two-way integration process' (Hansen 2005). Language testing in order to obtain permanent residency status became obligatory at the beginning of 2009. Different actors from the state administration, NGOs and others have reached a consensus on a need to promote knowledge of the language. Meanwhile, there have also been debates between the Ministry of Labour and Social Affairs and the Ministry of Interior regarding timing, as the former wished to postpone implementation of the exams to a date later than originally proposed by the latter.

In 2008, the coordination of state immigrant policies returned back to the Ministry of Interior, from which it was originally transferred to the

Ministry of Labour and Social Affairs. Firstly, transfer of authority in this field reflected the eventual marginalisation of immigrant policy issues within the Ministry of Labour and Social Affairs.¹⁹ Secondly, there was interest on the part of the Ministry of Interior's Department of Asylum and Migration Policy to better interconnect immigration and immigrant policy. This need was subsequently explained by growing immigration, tensions arising in some urban areas with a high number of foreign manual labourers, especially in the automobile industry, and a need to change the integration strategy (Ministerstvo vnitra 2009). This led to the weakening role of NGOs, which had been a more important partner in the field of immigrant policy when the Ministry of Labour and Social Affairs was responsible for its coordination. The Ministry of Interior deemed NGOs incapable of solving the situation caused by the recent wave of labour immigration. Thirdly, this transfer of authority over immigrant policies to the Department of Asylum and Migration also underscored a greater strategy of bringing tasks previously done by different administrative bodies under the auspices of one department. This may eventually lead to the creation of one administrative body that will be responsible for migration issues, a matter that has been continually put on the table (Baršová & Barša 2005).

The integration of the Czech Republic into the Schengen Area and the (gradual) abolition of external borders as of December 2007 represented another turning point in migration policy. The notions of borders and national sovereignty were transformed. Four 'zones' of border control were formed: the EU's external border, countries of emigration and transit, international cooperation and the territory of the Czech Republic itself. The National Plan for Integrated Border Management also foresaw creation of the Analytical Centre for Border Protection and Migration, which is a permanent body comprising representatives of different ministries (Ministerstvo vnitra 2008).

4.1 *Legal provisions and actors*

Following the Foreigners Act no. 326/1999 Coll. has been a number of major and minor amendments. Most have aimed to harmonise Czech policy with the current EU *acquis* as well as respond to developments in migration processes and policy gaps. The need to harmonise legislation before and after the Czech Republic's entry into the EU produced a considerable amount of work for the high-level Czech administration dealing with migration policies (Baršová & Barša 2005). Migration policies have often been characterised by Czech migration scholars as 'mainly EU-driven' and mostly influenced by high-level bureaucrats (Drbohlav 2005; Baršová & Barša 2005).

The transposition of European Council Directive 2003/86/EC on the right to family reunification and Council Directive 2003/109/EC,

concerning the status of third-country nationals who are long-term residents had far-reaching consequences. These directives substantially enhanced the rights of migrants and limited national sovereignty over the permanent settlement of immigrants in the country. Family reunification was to be newly understood as a 'right'. The previous requirement of a ten-year stay to qualify for a permanent residence permit was reduced to five years. What's more, the status of permanent residency became even more secure: it is more difficult than ever before to deport immigrants with such status. This was a major change when compared to the original Foreigners Act no. 326/1999 Coll., which tried to limit access to permanent residence by discounting the period of residence prior to the passing of the act. In general, preparation and application of these acts (no. 428/2005 Coll. and no. 161/2006 Coll.) in Czech Parliament did not provoke much debate.²⁰ The affair was described as yet another 'primacy of law over politics: thanks to EU accession there has been a forceful transposition of the EC/EU legislature on a priority basis, without taking into account the overall direction and coherence of Czech migration and immigration policies' (Baršová & Barša 2005: 224).

The main debates over the creation of new acts among various governmental and non-governmental actors mostly took place before these acts entered the Parliament. This may be termed 'closed-door' policymaking done by civil servants and experts. In this process, a number of viewpoints played a role, notably those of security, labour market needs and human rights. Security concerns, however, changed in the post-2001 period. For example, the Security Information Service became a more active participant in the discussion of migration issues (e.g. within the committee of the Minister of Labour and Social Affairs on Irregular Migration) and proposing legislative changes.

Migration matters have not been politicised in the sense that Parliament has not had a major role in detailed discussions on the Foreigners and Asylum Acts. There is only one committee, the Security Committee (formerly the Security and Defence Committee), specialised in migration matters. This low level of politicisation also shows that political parties have had neither extremely divergent nor clear views on migration. And since 1998, no extreme-right-wing party has managed to achieve the 5 per cent quota required to enter Parliament. There has been no extensive parliamentary debate, partly due to migration matters not being a political priority and partly due to the fact that the Foreigners Act has become too complex to understand.²¹

High-level bureaucrats from the ministries, the Public Defender of Rights, the Representative of the Governmental Council for Human Rights, NGOs and other institutions have all gotten used to this closed-door policy. During the preparation of bills within the state administration, there has usually been space for compromises, which has made it possible to accept

this approach to migration policymaking; at the same time, NGOs, the Public Defender of Rights or other actors still try to promote some changes to legislation in Parliament. There has been an understanding among NGO workers and policy analysts that a higher politicisation of migration issues might harm migrants. This consensus on the closed-door policy was, however, broken in 2007 during parliamentary debates on the amendments of the Foreigners Act (no. 379/2007 Coll.). A coalition of NGOs refused to accept the compromises that were made and the reasoning behind some restrictive changes proposed by the Ministry of Interior.²²

Apart from the aforementioned security and human rights concerns, the most important issues in migration policy regard growing labour shortages, the bureaucratic procedures involved in organising legal employment of migrants from third countries and ways of organising labour migration.²³ New actors have appeared (or old actors have become more visible). CzechInvest, a governmental agency encouraging investment in the Czech Republic, set up a working group on migration, discussing more flexible access to foreign labour force that would respond to the immediate and long-term shortages on the Czech labour market. On several occasions, CzechInvest asked the Ministry of Labour and Social Affairs to create a list of professions in which there were shortages, which could eventually lead to a specific policy for these professions. Although unsuccessful, similar ideas have been presented at the Ministry of Industry and Trade due to pressure from employers and businesses claiming labour shortages. Thus emerging was the policy known as 'Green cards – parametric model for the Czech Republic'.

As mentioned, high-level bureaucrats have been influential in migration policymaking in the Czech Republic. This is still the case, though becoming more significant is the role of employers and their associations – these groups being the catalyst for legislative changes related to the green card (Act no. 382/2008 Coll.). This corresponds to the convergence of the Czech Republic and other Central Europe states towards externally oriented competition states (Drahokoupil 2009). Towards the end of the 1990s, externally oriented economic strategies favouring foreign direct investment began winning over the once internally oriented ideas of economic development in the Czech Republic. As part of the rising competition state, various social and economic policies have been '(to different extents) subordinated to the competitiveness agenda' (Drahokoupil 2008: 177). The 2008 legislative amendments that liberalised some areas of migrant employment attest to partial subordination of labour migration policies vis-à-vis the competitiveness agenda. A motto of one of the new policies was defined in 2007 as follows: 'We do not want a situation in which businessmen leave; rather, we want the labour force to come to them.' (Ministerstvo průmyslu a obchodu 2007: 9). EU-level proposals allowing skilled immigration from non-EU countries (e.g. via the 'blue cards'

scheme) have not accommodated the local demands for manual and skilled labour that correspond to Fordist-style industrialisation.

5 Conclusions

Along with other authors, we could claim that integrating into the EU and the high-profile migration issues occurring throughout the 1990s across Western Europe played a significant role in the history of Czech migration policy development. Such policies would not otherwise have been formalised so quickly, or would have altogether developed differently. As part of EU entry regulations, the Czech Republic has accepted the (ever-changing) EU *acquis* in the area of Justice and Home Affairs. Czech clerks have taken part in twinning programmes, as well as formal and informal meetings with colleagues from other EU member states or staff from the European Commission. Facing an abundance of preparatory activities for EU entry and a lack of local political leadership in the area of migration, the Czech administration believed for some time that translating EU legislature and practices into the Czech context would in fact lead to the creation of a national 'migration policy'. This, however, has proved wrong. These high-level administrators also discovered that there was no clear EU migration policy. It should also be mentioned that, with no clear priorities or contents, Czech migration policy was rather flexible. This led to acceptance of the EU *acquis* without conflicts, for example, over its effects on national sovereignty (Baršová & Barša 2005).

Nevertheless, there have been some dynamic developments in migration policymaking and immigration in the years following the Czech Republic's entry into the EU. This was caused mostly by a restructuring of the Czech state in the international economy, which tied labour migration to the discourse of competitiveness. The liberalisations, as exemplified by amendments to the Foreigners and Employment Acts since the beginning of 2009, should not, however, be seen as structured only by the rise of the competitive state. Security concerns of the state administration influenced the concrete realisation of the law. In other Central and Eastern European countries that have converged to a similar kind of competitive state as the Czech Republic (Drahokoupil 2009), liberalisation of migration policies has also been realised to some extent. The impact of the international economic crisis has, however, slowed down the opening of labour markets to non-EU migrant labour. In the long term, one can expect to observe the continued impact of foreign direct investment on labour immigration.

Notes

- 1 We thank the Open Society Fund Prague for its financial support in creating this chapter, as well as Maren Borkert for her comments.
- 2 One exception would be Slovak Roma whose migration to the Czech lands has been considered problematic by parts of local and national Czech authorities. This is being monitored by the Czech Ministry of Interior.
- 3 If one considers criminal offence statistics an indicator of the presence of foreigners on Czech territory, 2008 saw criminal prosecutions against 1,475 Slovak citizens and 536 against Ukrainian citizens ([http://www.czso.cz/csu/cizinci.nsf/t/F20047486C/\\$File/co8to1.pdf](http://www.czso.cz/csu/cizinci.nsf/t/F20047486C/$File/co8to1.pdf)). This might lead to the conclusion that there is likely a significantly higher number of Slovak citizens than Ukrainian citizens living on the territory.
- 4 The authors of this chapter have also been involved in the migration policymaking process in the capacity of employees of NGOs.
- 5 Act no. 68/1965 Coll. and the implementing regulation no. 69/1965 Coll.
- 6 Their return was justified not only on ethnic grounds, but also ecological problems (caused by the Chernobyl disaster) as well as political and economic instability.
- 7 This particular permit was abolished as of 1 January 2009.
- 8 In 1996, the mayor of Prague met with the Minister of Interior and the police chief to ask for a stricter approach on undocumented migrants in Prague due to rising levels of crime. The possibility of introducing visas for people from a number of countries was discussed (MF Dnes 1996a).
- 9 This is the Czech body that administers residence permits.
- 10 'One such example concerns the so-called border cards that only citizens of specific countries were supposed to fill in at the country's points of entry and exit.
- 11 The first concept of the new law in 1996 suggested this period should be fifteen years because, only after this length of time, could it 'be judged whether [the foreigner] is able to integrate into society', as the substantiating report to the act states.
- 12 Act no. 498/1990 Coll.
- 13 The department has been known by this name since 1994; it is headed by a directorate.
- 14 Up until 1998, there was only a small human rights department in the Ministry of Foreign Affairs.
- 15 Up until the 1999 Foreigners Act, most decisions were excluded from judicial review.
- 16 This argument was criticised by Czech demographers and stopped being widely used.
- 17 See, for example, the statement by the Minister of Labour and Social Affairs regarding a green card scheme and the possible exclusion of Muslims (Lidové noviny 2007).
- 18 Tests of Czech language skills are planned in the context of acquiring permanent residency status.
- 19 Head of the Ministry of Labour and Social Affairs' Department of Migration and Integration was not officially appointed for a few years following the former head's departure for a job in the European Commission.
- 20 Baršová and Barša (2005) are critical in saying that the 'easiest way to implement' the EU directive on long-term residents was the one chosen.
- 21 The Foreigners Act has become especially complex due to numerous revisions, mostly provoked by EU legislative changes and their casuistic nature.
- 22 For example, the coalition of NGOs disagreed with amendments to policy on mixed marriages and asylum procedures at airports.

- 23 There have been critiques of the so-called client system. The 'clients' are part of a system organising labour immigration from Ukraine, Moldova and other countries (particularly from the Commonwealth of Independent States), to the Czech Republic. The clients are intermediaries, i.e. clients of the mafia. The workers involved in the client system get full service (employment, housing, possibly a residence permit, etc.) and protection. Czech employers in construction and other sectors of economy have relied on a ready-made supply of migrant workers for whom they take no responsibility (see e.g. Černík 2006).

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10 The case of Poland

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1 Introduction¹

The Cold War's division of Europe impacted forms and directions of migratory movements on the continent. For both ideological and economic reasons, Poland was excluded from the modernisation process that occasioned mass immigration to Europe starting in the 1960s. As a result, the country did not experience rapid inflows; nor did it experience its consequences, such as the politicisation of migration issues.

After the collapse of Communism and the dismantling of the whole Soviet Bloc, a rapid process of transformation started in Central European countries, affecting the majority of political and economic spheres of life. The highly developed countries of Western Europe emerged as a primary reference point for the changes. Many institutions and measures designed in the West in response to the immigration phenomenon were transposed to Poland during the process of harmonisation with the EU. This led to a paradox: attempting to create migration policy before there was a real need for it, in terms of immigrant numbers.

That Poland needed a proactive migration policy (see Iglicka 2003) was actually a view transferred from the West along with other migration-related concepts. The opinion soon gathered much support, mainly among NGOs and within some academic circles. As such, examples based on experiences of Western countries have often been the only legitimising argument in favour of the policy changes postulated by migration experts.

At the same time, institutions facilitating or blocking emigration had existed in Poland since its reestablishment in 1918. This element of migration policy 'officially' disappeared from migration policy discourse as well as highly publicised government initiatives after 1989. This runs counter to the fact that it is emigration – not immigration – that should be an issue in Polish migration policy, given the discrepancies in the scale of the country's outflows and inflows. It was only the huge post-accession outflow that brought emigration back into the political and public debates.

2 A history of migration: From sole emigration to emigration and immigration

Until recently, migratory flows in Poland have predominantly concerned the outflow of Polish nationals. Politically motivated emigration dates back to the end of the eighteenth century when waves of political refugees left Poland due to the country's partition, followed by uprisings for independence carried over into the nineteenth century. At the same time, the first half of the nineteenth century witnessed the beginning of economically motivated emigration from Polish lands both to European countries – mainly Germany – and overseas, with the Americas as the main destination (Pilch 1984).

The restoration of an independent Polish state in 1918 did not stop these large emigration movements. Polish settlers continued to head for the longed-for yet increasingly difficult destination of the United States, Canada and South America, as well as many European countries for more temporary periods (France, Belgium and Latvia) or seasonal stays (Germany). Consequently, the total population lost to emigration in the interwar era exceeded one million (Janowska 1981).

After the population losses of World War II and the post-war population and territorial shifts, which resulted in the forced uprooting of millions of Central Europeans, Communist Poland dissociated itself from migratory movements. Migration was associated with 'capitalist' regimes, a result of the capitalist-bred inequalities in societies. Yet, Communist attempts to close off Poland were not successful. Significant numbers emigrated from Poland via ethnic channels, mainly people claiming German origin and Jews. Furthermore, the gradual liberalisation of exit rules enabled Poles to participate fairly actively, albeit mostly in an irregular way, in European migratory flows during the 1980s (see Jaźwińska & Okólski 2003).

Inflows to Poland under Communist rule were sparse. The post-war waves of repatriation and returns left many Poles abroad. Repatriation from the East was stopped due to the political dictate of the Soviet Union, while many Poles in the West chose to emigrate rather than return to a Communist country (Kersten 1968). Immigrants were not attracted to Poland because of the harsh conditions of its socialist economy as well as its oppressive political system. The exception was student exchanges within the Communist Bloc, which led to the beginning of a Vietnamese diaspora in Poland. Communist Poland also had some early, albeit limited, inflows of political refugees from Greece between 1948-1956 and Chile after 1973 (Florczak 2003).

To recapitulate, by the end of the Communist period, Poland had hardly any inflows of foreigners, but its emigration record was active. The changes that followed the collapse of Communism in Central and Eastern Europe resulted in a radical shift in mobility patterns and placed Poland in

a new migratory position. Once being purely an emigration country, Poland started to receive its first transitory migrants, followed by modest numbers of asylum seekers, until immigrants finally began heading for Poland itself.

Official immigration figures after 1989 are not high, especially in comparison with those of Western countries. According to official statistics, for the years 1990-2006, officially registered emigration (399,700), outnumbered immigration (125,200) by 274,500, and Poland remained predominantly an emigration country (CSO data cited in Kępińska 2007). At the same time, according to some estimates, foreign workers from the East, mostly Ukrainians, actually number up to several hundred thousand, being illegally employed in seasonal or temporary jobs in agriculture, construction, care-giving and domestic service.

Apart from its new role as a transit and destination country in international migratory flows, Poland maintained its old role as a sending country in European flows. Apart from officially registered permanent emigrants, Poles joined the more temporary migratory flows. Since the 1990s, Polish seasonal workers in Germany have represented a significant part of migratory outflows thanks to a bilateral government agreement. Flows gradually increased, reaching over 290,000 a year in 2003 (Kaczmarczyk 2005). EU accession heralded a new wave of emigration from Poland. The UK and Ireland, which opened their labour markets to nationals from new member states, increased in importance as new destination countries, attracting much of the post-accession outflow to reach over 1,100 000 persons (Grabowska-Lusińska & Okólski 2009).

Summing up, after 1990, the migration situation in Poland changed significantly. New forms of immigration and transit migration emerged though, at the same time, outflows remained considerable. They have always exceeded inflows, both in reality and in official statistics.

3 Polish migration policy: Historical background and development after 1989

Similar to other countries, Poland's migratory flows have been affected by predominant factors shaping the emergence and evolution of the state's attitude towards both the international mobility of its citizens and the inflow of foreigners. The historically shaped vision of the nation and the tradition of large outflows contributed to Polish migration policy being established foremost as an emigration policy; emigration was regarded as a necessary evil in the agrarian Polish economy of the interwar period. Framing the outflow of nationals in terms of 'bleeding from the vessels' (Jarzyna 1933) but also as a 'safety valve' (Głębiński 1931) that could reduce tension in overpopulated rural areas, migration policy focused on enabling the

emigration of Poles and optimally protecting emigrants' rights (see Janowska 1981; Kicinger 2005). Throughout the interwar period (1918–1939), the issues of emigration and the return of Poles thereby dominated public and political migration debates as well as actual policymaking.

Parallel to emigration regulations, the country established the foundations of Polish nationality law. The first law on Polish citizenship was passed in the 1920s, and introduced many legal concepts that long remained in subsequent Polish nationality legislation.² The law covered the prohibition of dual citizenship and introduced strict criteria for naturalisation.³

The inflow of foreigners was negligible during the interwar period, yet the country issued its first, rather restrictive regulations on their entry and stay in Poland. Rules limiting the sale of land to foreigners were also established as far back as the 1920s,⁴ and this laid the foundations for the general philosophy of these regulations, which remained unchanged until the end of century. The precarious geopolitical position of interwar Poland accounts for this restrictive approach. The newly resurrected state – with its pressing, unsolved problems of ethnic minorities and faced with Communist enemy ideology spreading in the East (perceived as the 'red blight') and German revisionism in the West – had no interest in inviting foreigners in.

Poland, economically and politically backward due to its partition in the nineteenth century, was a peripheral sending country in European and world migration flows. This was illustrated by the obvious duality of migration policy in interwar Poland. The main focus of the policy was emigration issues and the return of Poles. The policy regarding foreigners was definitely of minor importance.

The Communist iron curtain artificially halted labour migratory outflows from Central European countries. Yet, the one-sided migration policy, with its predominant focus on emigration, was maintained during the Communist rule that characterised the People's Republic of Poland – in Polish, the *Polska Rzeczpospolita Ludowa* (PRL). The core of state policy was regulating the mobility of Polish citizens, with little interest paid to the negligible inflow of foreigners. Migration policy came to reflect the political and ideological agenda behind it. The early Communist decades were characterised by the state's totalitarian attempts to 'close off' Poland with severe repressive measures. Arbitrary rulings regarding who could leave (for either permanent or short stays abroad) characterised the state's attitude towards migration, especially in the early decades of the PRL (Stola 2010). Yet, the state's efforts to keep its citizens within the boundaries of 'socialist heaven' were bound to fail. Severe deficiencies of the socialist economy, as well as the oppressiveness of the political system, prompted many thousands of Poles to undertake permanent or temporary emigration – both legal and illegal.

At the same time, development of policy on foreigners was seriously hampered by the lack of immigrant inflows to Poland. A systemic distrust of foreigners in the early Communist regime gradually evolved into a more open approach, especially towards citizens of friendly socialist countries. An international exchange of labour and students among the brotherhood of socialist economies was seen as a means to help developing countries such as Libya, Cuba and Vietnam in their efforts to build a socialist regime. The first comprehensive regulation on foreigners, the Act on Aliens of 1963, corresponded to the reality of the negligible inflow of foreigners, having been designed mostly to control these incomers.⁵

After 1989, traces of the dual nature of migration policy and policymaking also became evident. A distinction could be drawn between policy addressing co-ethnics (which replaced the former restrictive exit policy) and policy towards foreigners, as developed in both interwar Poland and the PRL. Yet relations between the two components of migration policy were inverted, alongside the changing migratory situation of Poland and the increasing influence of Western migration policy agendas. Mimicking Western patterns, the policy towards foreigners became a crucial part of Polish migration policy after 1989 and dominated migration policy content. As in the West, migration and immigration policy became synonymous, shaping research and the policymaking process. For the first time in modern history, the policy regarding co-ethnics played a secondary role.

The policy towards foreigners initially developed around questions of border control. This was not a surprise considering the increasingly mobile society and security concerns resulting from real or potential risks connected to this increased international mobility through Polish borders (Anioł 1995). Within this policy, more and more often perceived and termed as Polish migration policy, several subfields emerged, with refugee policy being the first one to develop.

The encounter with world refugee movements resulted in the establishment and gradual evolution of refugee policy. The first changes in Polish law resulted from the adoption of the Geneva Convention and the New York Protocol in the beginning of the 1990s. The changes opened up inflow channels for asylum seekers, many of whom were headed for the West while treating Poland as a transit country. The refugee policy gradually evolved, being affected firstly by Western influences, then by those of the EU. The 1997 Act on Aliens brought concepts such as 'safe third country', 'safe country of origin', 'manifestly unfounded application' and 'accelerated procedure' into Polish legislation. All were introduced earlier in Western countries in an effort to curb inflows of asylum seekers.⁶ The new Constitution, finally adopted in 1997, guaranteed the right to asylum and to apply for refugee status with reference to implementing laws and international agreements (article 56). Subsequent changes were brought about by the 2001 amendment to the Act on Aliens that had been implemented

during negotiations on Polish EU membership and bore much more EU influence than previous regulations.⁷ The amendment institutionalised temporary protection to Polish law, drawing on European experience with inflows of refugees from the war in former Yugoslavia. And finally, 2003 saw the new Act on Granting Protection to Aliens within the Territory of the Republic of Poland⁸ that introduced the permit for tolerated stay as a new form of humanitarian protection. This new feature resembled many European regulations regarding humanitarian protection. The aim was to offer basic protection to unsuccessful asylum seekers who could not be returned to their countries of origin on humanitarian and human rights grounds.⁹ The new form was especially relevant to Chechen asylum seekers, who represent the vast majority of asylum applications in recent years in Poland and, as expected, became the primary beneficiaries of the permit for tolerated stay. Several amendments were also made to bring other forms of protection into line with the EU *acquis* in the field (Kicinger 2009). In 2008, the permit for tolerated stay was to a great extent replaced by the subsidiary protection¹⁰. All in all, the refugee policy was operating on limited numbers of asylum applications and refugees in comparison to Western European standards, though it became the most Europeanised sub-field of Polish migration policy (Kicinger, Weiner & Górny 2007).

Besides refugees, Poland has attracted economic immigrants seeking employment, business and trade opportunities in its changing economy. Labour market changes and the economic transition of Central and Eastern European economies have attracted highly skilled Western specialists and experts, but have also launched new short-term, intensive forms of mobility between Poland and the East, especially Ukraine. Many Ukrainians were attracted to trade above all, and then to irregular employment, on the developing secondary labour market in Poland (see Okólski 1998a). The policy addressing labour immigration represented the state's response to these inflows. The policy, which was officially designed to be restrictive, proved, in practice, to be tolerant of the irregular employment of Eastern workers in Poland (Kicinger 2009). As early as 1989,¹¹ a work permit procedure for foreigners based on an evaluation of the labour market was introduced. The labour market test, along with the costly and complicated administrative procedure, represented the primary barriers to legal economic immigration into Poland, especially in view of the fact that unemployment levels had skyrocketed to over 18 per cent at the turn of the century. Consequently, the numbers of work permits issued to foreigners remained low for the whole post-1989 period, only once in 2002 reaching 20,000 a year. The majority, especially in the early 1990s, was issued to Western counsellors, experts and language teachers.

Yet, as previously mentioned, while the official immigration was limited, thousands of Ukrainians, Belarusians and Russians found employment in the emerging secondary labour market. They took up construction,

agriculture, housework and care-giving services. It is worth noting that Ukrainians and other workers from the East entered Poland legally thanks to the non-visa and, later, short-term Polish visas; but without work permits, their employment was illegal. The large groups of foreign workers from the East could have been considered a serious policy gap in a state suffering from severe unemployment, particularly considering its attempt to protect the native labour force. Yet, such a gap is not as evident if the state policy is analysed in the context of a policy of tacit tolerance towards irregular workers from the East (Kicingier 2009). What's more, this policy of tolerance had a political and economic rationale. The intense social contacts being bred were desirable in view of foreign policy goals, which included developing good-neighbourly relations with the East, whereas the economic benefits (boost in petty trade, a supply of cheap labour force) were rather diffused and did not endanger the interests of any influential social group.

This policy subfield was strictly connected to the liberal visa policy. The liberal non-visa regime, practically inactive in the PRL period, was maintained after 1989 and resulted in the growth of a cross-border mobility that enabled development of new forms of circular petty trade mobility. This later developed into seasonal or temporary irregular employment on the secondary labour market in Poland, concerning the nationals of Poland's Eastern neighbours. The visa policy was the only policy field that elicited public debate about Polish interests during the EU accession process (see Kaźmierkiewicz 2004). Serious concerns were raised that the EU requirement to introduce visas for Poland's Eastern neighbours could be detrimental to their good-neighbourly relations and hamper economic development of the border regions.

Demanding conditions for temporary and permanent residence permits led to the establishment of longer-term migrants in irregular positions. The regularisation action launched in 2003 signalled state acknowledgement of the presence of irregular immigrants in Poland. The criteria for regularisation were a seven-year stay in Poland and proven means for living. The main beneficiaries of regularisation, numbering less than 2,500, were members of the Armenian and Vietnamese diaspora.

The still nascent, if not embryonic, immigrant policy subfield did finally emerge. The low official figures, just over 52,000 immigrants according to 2002 Census data (Jaźwińska 2006), was insufficient to elicit politicians to set up any kind of integration policy. Special integration programmes were established only for the two relatively privileged groups of incomers: acknowledged refugees and Polish repatriates. These small-scale programmes could be a good start in terms of further development of the field in the future.

The restrictive exit policy, the key part of migration policy up until 1989, disappeared after that year. After years of variable levels of

restrictions on international mobility, the passport law's final liberalisation in 1990 seemed to spell the end of the era of emigration policy and shift the focus of the authorities onto new questions. We claim that there was a shift in emphasis, that emigration policy changed into policy on co-ethnics. Three policy subfields can be distinguished within this area: the traditional yet limited 'emigration' policy, the policy of close links with the Polish diaspora and the revitalised repatriation policy. A lack of concentration of state activities in these subfields, which can also be seen in a lack of a central ministry or organ responsible for this set of issues, contributed to policy towards foreigners dominating migration policy content.

As Polish citizens regained the freedom to travel abroad, emigration policy – in the sense of determining who was entitled to leave – became a thing of the past. Instead, the authorities focused on enabling Polish citizens to travel without visas and to undertake gainful employment abroad. The former goal was fulfilled in 1991 upon conclusion of an agreement with the Schengen countries on visa-free travel. The latter came about gradually in the form of a network of bilateral agreements and during negotiations with the EU regarding transitional periods in the free movement of workers.

Between 1989 and 2002, Poland signed as many as nineteen bilateral agreements aiming to provide Polish citizens opportunities to work abroad. Most of them concerned exchanges of trainees or seasonal workers, but the limits for Polish workers or trainees were usually very low, ranging from 30 workers in the case of its agreement with Luxembourg, to 1,000 in its agreement with France. Only the agreements with Germany (1990 and 1994) set no limits on the seasonal employment of Polish nationals in the country for a period of up to three months. These agreements in fact accounted for the largest legal seasonal outflows of Polish citizens, which rose gradually throughout the 1990s (Kaczmarczyk 2005). The intergovernmental agreement, a result of policy decisions by the German and Polish governments, proved to be the most important measure to create opportunities for Polish nationals to take up gainful employment in EU countries even before accession. Subsequently, a similar agreement on unlimited seasonal employment was concluded with Spain in 2002. Yet, in 2003, the number of seasonal workers amounted to just over 10,000.

The strict accession negotiations in the context of the free movement of people can also be seen from the point of view of emigration policy, specifically state efforts to enable its citizens to work abroad (see Kicinger 2009). The freedom of movement idea, including the right to take up employment in any EU country, was perceived by Polish society as one of the core benefits of EU membership and highlighted as such in the media. The introduction of transition periods in this field was presented as an unavoidable concession given the pressure of public opinion in EU countries. In a similar vein, post-accession work opportunities in the three countries that

opened up their labour markets were highlighted. As in the case of bilateral agreements, the fight to enable Polish citizens to access Western European labour markets could be regarded as an aspect of the policy aimed at facilitating the outflow of workers. To recapitulate, although post-1989 Poland did not officially have any emigration policy, the aforementioned policy measures allow us to assume that such policy was pursued *de facto*.

Another subfield of policy addressing co-ethnics was the policy of repatriation. This was seen as the return to Poland of Polish nationals or their descendants with a view to settling in the mother country, combined with a privileged channel for acquiring Polish citizenship (Łodziński 1999: 314). Those entering Poland on a repatriation visa acquired Polish citizenship as they crossed the border. The concept of repatriation, present in the Polish migration policy since the interwar period, is based on the assumption that Poland is open to all people of Polish origin. Yet, under Communist regime, the law remained a dead letter for decades due to political constraints (Hut 2002). Only the political and economic transformations after 1989 attracted new repatriates to Poland. The obvious inadequacy of former regulations was overcome with the new law on aliens of 1997, which formalised the repatriation procedure and the status of repatriates (Hut 2002: 48-51).¹² The separate bill on repatriation was adopted in 2000¹³ as a result of a general consensus of public opinion and among all political parties that repatriation should be continued.¹⁴ Yet, the geographic scope of repatriation was limited to the Asiatic republics of the former Soviet Union, thus leaving many people of Polish origins in neighbouring countries outside the scope of the law. Due mostly to financial constraints, the inflow of repatriates turned out to be almost numerically negligible in practice, with less than 6,000 persons arriving between 1997 and 2006 (Kepińska 2007: 95), which is only a tiny fraction of other inflows to Poland.

Finally, the third subfield addressing co-ethnics after 1989 was the policy on the Polish diaspora. Like repatriation, this policy had long-standing traditions going back to the interwar period as well as the ignominious past. The Communist regime was characterised by spying and an infiltration of secret agents in the Polish diaspora abroad. Establishing links with Polish nationals and the Polish diaspora abroad slowly moved up on the political agenda, though only at the end of 1990s. The 1997 Constitution revoked the special links with Polish nationals abroad (article 6). In 1999, unsuccessful attempts were made to enact the act on *Karta Polaka*, a law that would provide special privileges to people of Polish origin with regard to border-crossing and the right to stay in Poland. No compromise was reached over the scope of rights attached to this semi-citizenship status for people of Polish origin, and doubts were raised over whether the proposal kept in line with international law and future Schengen obligations. As a consequence, after a year-long debate, the act never reached the vote (Górny, Grzymała-Kazłowska, Koryś & Weinart 2002: 28-29). After 2005,

the issue did little more than move up on the legislative agenda until 2007, when the *Karta Polaka* was finally passed. The most visible sign of policy in action came in the form of scholarship that enabled students of Polish origin to study in Poland, under the premise that these educated people would return to their place of origin and help maintain the Polish identity of their local communities. This assumption proved mistaken, as most of the students chose to remain in Poland after completing their education.

Only recently, after the much-publicised outflow of Poles following EU enlargement, did serious political debate begin on the nature, consequences and reasons of this emigration wave. The debate heralded new policy actions addressing the issue of emigration and the protection of Polish migrants abroad as well as helping them to maintain links with Poland. In 2008 a first governmental return campaign was launched. It aimed to serve as a practical source of information for Polish migrants considering return.¹⁵

To summarise, the restrictive exit policy of the Communist regime gradually evolved into a multidimensional policy addressing co-ethnics after 1989. The policy focus here was primarily concerned with people of Polish origin living abroad, especially Polish ethnic minorities in the East, and resulted in reopening the possibility of repatriation as well as *Karta Polaka* regulations. A pro-emigration attitude was witnessed in the state's efforts to enable its citizens to undertake gainful employment abroad. Only in the post-accession period was there a revival of the idea of emigration policy focused on protecting Polish migrants abroad. The three policy areas, which developed slowly in reaction to past or present experience of emigration, constituted a more Poland-focused and Poland-oriented sector of migration policy. Yet, it was the policy towards foreigners – renamed as migration or immigration policy – that, due to Western influences, became more important in policy terms.

4 Migration policymaking: Policy on foreigners after 1989

Irrespective of changing coalitions and political forces, migration policy, in both its components – addressing foreigners and co-ethnics – developed in a gradual, extremely bureaucratic fashion (see Weiner 2006). A gradual evolution would appear to be the most fitting way to describe the development of policy and politics on migration. As it is hard to establish any real turning points, both in development of migration policy and in migration policymaking after 1989, the analysis of migration policymaking corresponds to the evolutionary, rather than revolutionary, nature of changes in Polish migration policy.

In the Polish political system established by the 1997 Constitution, Parliament, comprising the *Sejm* and the *Senat*, represents the nation.

Elected by a democratic voting process, Parliament remains the central source of power, being the legislative organ able to appoint and control the government. The government is responsible for all internal and external policies. The executive is divided between the government and the President. All state organs are controlled by an independent judicial system, including the Constitutional Tribunal.

Poland's multiparty system led to the creation of centre-left (1993-1997, 2001-2005) or centre-right coalitions (1991-1993, 1997-2001 and 2006-2007) that have constituted the parliamentary majority-supporting the government. The core of the policymaking process generally takes place in the Sejm – where the interests of pro-coalition and opposition parties are expressed and debated in plenary sessions – as well as parliamentary committees and subcommittees.

This prevailing policymaking pattern did not emerge for migration. The government and central administration institutions formed the core of migration policy changes after 1989. The legislative authorities and courts were involved, but it was undeniably the government that took the lead in the policymaking process. Thus, the policymaking process itself turned out to be gradual and bureaucratic, involving a limited number of players.

4.1 The emergence of policymaking structure in the 1990s

The Ministry of Interior came to be the primary governmental organ responsible for migration and refugee affairs. The first institutions to respond to the new migratory challenges were developed within the Ministry of Interior in autumn 1990. Yet, it was the Ministry of Health and Social Assistance that first undertook actions. The small numbers of refugees who somehow found themselves in Poland in the 1980s were assisted by the Polish Red Cross. The problem grew in 1990 when a few hundred people, mostly of African origin, were sent back to Poland from Sweden, despite the lack of readmission agreement between the two countries. The Swedish authorities were able to do this after 1989 without fearing a public outcry over asylum seekers being sent back to a non-democratic country.

The problem soon outgrew the capacities of the regional authorities originally assigned to handle the situation. It became obvious that responsibility for the new group of incomers had to be shifted to a central level. The Inter-Ministerial Group for Aid to Foreign Refugees was established as the first central body to deal with the problem (Szonert 2000). The Ministry of Health and Social Assistance played a key role in this group whose focus was on catering to the basic needs of refugees. Meanwhile, the Polish Red Cross took the lead in implementation.

When Poland's negotiations with Sweden concerning cost-sharing for the returned asylum seekers proved unsuccessful, the Polish government began working with UNHCR, the main global actor in refugee matters.

The first asylum seekers, who amounted to more than 800, were relocated from provisional camps on the coast to refugee centres near Warsaw. Along with this relocation, policymakers realised that the situation had to be dealt with in a more institutionalised, standardised manner than carried out in prior ad hoc responses. The Inter-Ministerial Commission for Refugees (which included representatives of the seven ministries) was consequently established and the Ministry of Interior Plenipotentiary in Refugee Affairs was appointed as its head (Szonert 2000). At this time, refugee affairs passed to the Ministry of Interior, which had been the main ministry responsible for migration and refugee affairs until then.

The Ministry of Interior Plenipotentiary gathered an ad hoc inter-departmental group. They were to address the problems of legality as well as the material needs of the new group of aliens, many of whom disappeared from the refugee centres to try to make it to the West. The group developed its activities in close collaboration with UNHCR and newly established Polish NGO the Helsinki Foundation (Florczak 2003: 202-203).

The events that occurred in 1991 and 1992 convinced Polish policymakers that migratory flows were set to be a constant phenomenon in Poland, and that a more stable institutional structure was needed. First of all, Poland signed an agreement with the Schengen countries on visa-free movement, combined with readmission procedures, which could have led to increased forced returns of foreigners on the Western border. Further, Poland decided to adopt the Geneva Convention and the New York Protocol to formally acknowledge the legal status of people in refugee centres in Poland. Last but not least, Poland became a member of the Council of Europe, and Polish representatives were involved in the first cooperation fora that discussed migration and asylum issues. Polish representatives took part in the 1991 Vienna Conference of Ministers on the movement of people from Central and Eastern European countries. They were also involved in the so-called Berlin-Budapest process launched in by the Berlin conference in 1991 with regards to combating irregular migration (see Anioł 1995). Taking part in the work of the Council of Europe and the EU bodies concerned with asylum boosted the policy learning process and policy transfer from the West concerning asylum (Kicinger, Weinart & Górny 2007).

Need for a more stable institutional structure led to 1993's creation within the Ministry of Interior of the Office for Migration and Refugee Affairs, which was renamed the Department for Migration and Refugee Affairs in 1997. All issues relating to migration, refugee status and asylum were handled by this office, which also controlled the implementation of measures by local authorities. In particular, the department was responsible for receiving applications and making decisions in refugee procedures, as well as handling matters relating to the stay of refugees in Poland and their status.

Upon creation of the department, the Ministry of Interior strengthened its role as the primary body overseeing refugee and migration matters. Within the department (and earlier, the office), legislative proposals regarding the new Act of Aliens were developed. These proposals were submitted as a government initiative to the Sejm and passed in 1997. It is worth noting that ministry representatives took an active part in the work of the parliamentary commissions preparing the new law. Subsequently, officials of the department worked on the 2001 amendment to the Act on Aliens, which was also submitted as a government proposal to the Sejm.

The Ministry of Interior also came to supervise the Border Guard, a new police-like body set up in 1991 to replace the former PRL armed force. The institutional concentration of migration matters under the Ministry of Interior undoubtedly had consequences on policy content and fostered the import of security discourse concerning migration to Poland.

Under the 2001 amendment to the Act on Aliens,¹⁶ responsibility for refugee and migration matters was defined even more sharply through creation of the Office for Repatriation and Aliens (Urząd ds. Repatriacji i Uchodźców, URiC), renamed the Office for Foreigners in 2007. The first central administrative institution responsible for refugee matters, repatriation process and matters relating to the admission and stay of foreigners in Poland, the URiC was intended to be 'apolitical' and professional. It has served as the central body, with a technical mission, handling migration policy and politics since 2001. Though its establishment could have been a watershed in Poland's migration policymaking, the crucial role of the Ministry of Interior had not diminished. The head of the Office for Foreigners is appointed by the Council of Ministers on the initiative of the Ministry of Interior and is then controlled by the Ministry of Interior. Changes following the advent of the URiC seem to be even less significant given the fact that the office was established using staff and resources, including buildings, from the former Department for Migration and Refugee Affairs. On an official level, the URiC has a wide range of responsibilities, though this is not reflected in policymaking. It is treated as a central administrative body responsible for the implementation of policy, but not for its creation. At the same time, the legislative tradition of the Ministry Department was maintained, as the 2003 Act on Aliens and Act on the Protection of Aliens on Polish Territory were again developed within the URiC. Many of the officials who had formerly worked in the Department for Migration and Refugee Affairs were just transferred – not in a physical sense, as even the building remained the same – to the new central organ, the URiC. This type of institutional change only compounded the existing bureaucratic manner of policymaking, which was based in the realm of high government officials away from the public eye and political debate. The group of officials who had devised government proposals for the new

Act on Aliens of 1997 and its subsequent amendment in 2001 continued to work on the new acts, which were eventually passed in 2003.

The Ministry of Interior, albeit the leading body in migration policymaking, is not the only ministry involved. Apart from the Ministry of Interior and Office for Foreigners, other ministries have also been involved in particular subfields of migration policy. First of all, the Ministry of Labour and Social Policy should be mentioned. This ministry plays a vital role in regulating labour immigration to Poland and, since 2001, has been responsible for integration programmes. The Minister of Labour and Social Policy issues ordinances and prepares the legislative proposal of acts regarding the access various groups of foreigners have to different forms of social and health services; it also oversees regulations on the work permit system and exemptions from work permit procedures for selected groups of foreigners.

Limited numbers of foreigners and the relatively short period of inflow resulted in the Polish state's lack of interest in integration matters during the 1990s. Thus, no ministry had the funds or responsibility to handle this issue. At the same time, the importance of integration issues in old EU countries led to EU institutions becoming increasingly involved in integration matters. As a result, the Polish policymakers who had worked closely with EU and national policymakers in the pre-accession era lacked the formal competences to discuss, let alone present, an integration policy. It was non-existent. In the initial phase, issues of integration were delegated to the Office of the Committee for European Integration (UKIE), the leading central institution handling Polish-EU relations. Yet, as integration with the EU developed, the need for a ministry to handle integration issues arose, along with the need to represent Poland in various ministerial meetings at the EU level. In 2001, the responsibility for integration issues was transferred from the UKIE to the Polish Ministry of Social Affairs and, within it, a special department for integration issues was created. The issue of integration is a clear illustration of the EU's influence on Polish migration policymaking process: interaction with the EU led to institutional change in Poland.

As already mentioned, the Ministry of Foreign Affairs is responsible for the implementation of Polish visa policy. The ministry traditionally supervises the network of Polish embassies and consulates, the latter implementing visa policy in a practical sense. The role of the Ministry of Foreign Affairs in the creation of Polish visa policy was especially important, given that visa policy was viewed as a way of fulfilling foreign policy goals. One such goal was to develop and enhance good relations with Poland's Eastern neighbours, including at the society level. This resulted in maintaining the visa-free regime with these countries after 1990 and consequently allowed for the development of new temporary and circular forms of mobility between Poland and the East.

Clearly, the scope of visa policy was radically limited upon accession to the EU and acceptance of its visa policy. The EU's conditionality mechanism made it impossible to reject the policy requirements, yet the date of visa introduction was delayed as much as possible and the visa procedure was made as smooth and pleasant as possible (Kicingier 2009).

The role of the President in migration policymaking is generally limited except for one of the policy subfields, namely the naturalisation procedure. According to the Constitution, the President grants Polish citizenship and permission to renounce Polish citizenship.¹⁷ According to the Act on Polish Citizenship, which dates back to 1962 but has undergone numerous changes, Polish citizenship could be granted to foreigners living in Poland for at least five years with a permanent residence permit or for at least three years in cases of being married to a Polish citizen. However, the President may also grant Polish citizenship to foreigners not meeting these criteria, and he can also make the renouncement of other citizenships a condition for naturalisation.¹⁸ No legal guarantees to acquire Polish citizenship result from the naturalisation procedure as a presidential prerogative. Under the jurisdiction of the Supreme Administrative Court, the President's decision or refusal to grant citizenship is not an administrative decision and cannot be appealed in the Supreme Administrative Court (Jagielski 2001: 26). This situation allows for discretionary decisions by the President. In reality, numbers of naturalisations in Poland are not high, reaching an average of 1,600 a year (for the years 2000-2008) (CSO 2009). The data available on naturalisation does not include any information on the number of applications for – or refusals to grant – Polish citizenship. This represents a serious limitation when attempting to identify the President's naturalisation policy. To recapitulate, the traditional vision of the President as head of the nation seems to be the determining factor in naturalisation policy. The recently enacted Law on Polish citizenship (2009) *de facto* challenged the status quo and was turned over by the President to the Constitutional Tribunal to see if it complies with the Constitution.

As the two houses of Parliament, the Sejm and the Senat represent the central institution of power in the Polish political system. Yet, the lack of interest in migration shown by any political parties has led to Parliament's role being reduced to a purely legislative one. Consequently, the involvement of Parliament in migration policymaking has not corresponded to its role in the state political system. Parliament did not offer a forum for discussion on policy goals or, for that matter, a place where interests could clash.

Weinar's (2006) analysis of parliamentary debates both in committees and during the Sejm and Senat sessions clearly shows how the legislative process in the case of the Acts on Aliens and their amendments was not politicised. Subsequent legislative proposals were prepared in the Department

for Migration and Refugee Affairs and then in the URiC, and later presented as government proposals to the Sejm. The driving force for change, especially since negotiations with the EU began in 1998, was the need to bring Polish law into line with the moving target of the EU *acquis* (see Kępińska & Stola 2004). As the dominant argument in favour of the changes dealt with forthcoming EU membership and the obligations resulting from adoption of the EU *acquis*, the proposals did not elicit any serious opposition or party political debate. As Weiner (2006: 105) claims, all possible objections to the legislative process were resolved outside Parliament, in officials' cabinets through legal negotiations.

The process of democratic policymaking includes the control of independent courts over the legislative and executive powers. The role of the courts, as well as the intervening role of the ombudsman, cannot be neglected in an analysis of migration policymaking in Poland. From the migration policymaking perspective, the most important court is the Supreme Administrative Court, which judges many cases relating to foreigners. The Supreme Administrative Court (*Naczelny Sąd Administracyjny*, NSA) is a special central court that was set up to control compliance of administrative decisions with the law, as well as the actions and omissions of the public administration organs. Thus, the NSA is the appeal court for decisions issued by the Ministry of Interior and subsequently by the head of the Office for Foreigners. Many NSA decisions have dealt with conditions of visa issuance, the premises for expulsion or granting refugee status, temporary or permanent residence permits and foreigners' rights to buy real estate (see Jagielski 2001). The role of the NSA in defending the rights of foreigners cannot be underestimated.

An intervening role has also been played by the Commissioner for the Protection of Civil Rights, set up in 1987 to safeguard human rights and civil liberties. This ombudsman focused on legal interventions in cases of foreigners who alleged that their rights had been violated. It participated in the legislation process through monitoring any changes from the human rights perspective. An example of the ombudsman's work was the change in regulations regarding foreign children's access to public primary and secondary schools in 2001. The ombudsman claimed that the Ministry of Education's regulations of 1993, which established fees for public schools, were unconstitutional and did not comply with the Convention on the Rights of the Child (Iglicka, Kaźmierkiewicz & Mazur-Rafał 2003: 34). Thanks to this intervention, school fees were waived.

4.2 *The role of non-state actors*

The policymaking process, albeit bureaucratic in nature, has not been limited to official state actors. As already stated in this chapter's introduction, the deep-seated conviction that international migration is an obvious

feature of modernisation requiring a proactive migration policy to counter-act inevitable problems was transferred en masse to Poland, along with other ideological and institutional principles, during the EU accession and harmonisation period. One of these principles concerns building an open, tolerant and multicultural society – a task that in full-fledged democracies is partially delegated to (and often monopolised by) NGOs in the third sector.

Grass root social movements (like Solidarity) proved both highly active and efficient under the Communist regime and significantly contributed to its collapse. Constructed in opposition to state structures and entailing spontaneous cooperation on a local level, NGOs initially filled the gap between the state and the citizen – the institutional and social vacuum between the two was an acknowledged fact in the previous political system (Hausner & Klemetynowicz 1991; Wnuk-Lipiński 2003). However, apart from episodic growth spurts in collective independence, the third sector in Poland remains only moderately developed. Although thousands of NGOs have been established, only a tiny share remains active and self-sufficient, capable of raising funds and attracting volunteers to undertake their missions.

In the field of assistance and integration for asylum seekers and immigrants there is much to be done, as well as money to be raised. Moreover, the demand for non-governmental services is still usually larger than the supply of existing organisations and volunteers. This rather empty albeit attractive field was conquered by large NGOs, which have included migrant issues into the scope of their regular activities. For example, the Polish Humanitarian Organisation, under its charismatic leader, Janina Ochojska, has launched special programmes addressing asylum seekers (e.g. running a shelter for asylum seekers and acknowledged refugees), reintegration of Kazakh repatriates of Polish origin and awareness-raising initiatives (e.g. providing educational materials for teachers in lower and secondary schools). The Stefan Batory Foundation, which operates as an umbrella organisation, redistributes grants awarded by the Open Society Institute and the Ford Foundation into small-scale local initiatives. The Batory Foundation is also known for actively lobbying against the introduction of visas that limit movement among people from former the Soviet Union countries, something that has strengthened its position as a key player in matters concerning these countries. The Helsinki Foundation for Human Rights in Poland (HFHR) – an NGO established officially in 1989 by Polish members of the Helsinki Committee but preceded by seven years of underground activity – is another respected player in the field. HFHR's migrant- and refugee-oriented activities include monitoring the Polish authorities' observance of the Polish Constitution, the Geneva Convention of 1951, the European Convention on Human Rights of 1950, as well as Polish legislation concerning foreigners. With respected academics from

the field of international law among its members, and providing free legal advice to foreigners and asylum seekers, HFHR became the most influential advocate of these groups in Poland. It is routinely consulted by the Polish government, thereby successfully having an influence on the legislative process.¹⁹ A slightly different role is played by think tanks dealing with international relations (e.g. Center for International Relations) and public policy guidance (e.g. Institute of Public Affairs). For institutions such as these, the inclusion of migration issues was a direct consequence of the politicisation of international migration and the level of public attention given to this topic in the West.

Also worth exploring is the flow of funds coming from other European countries and the EU and, at the same time, agenda-setting. As charity donations from Polish businesses are rather limited, the basic sources of funding for NGOs are the public and municipal administration or foreign foundations (Open Society Institute, Ford Foundation, German Marshall Fund and Freedom House, to name but a few). La Strada, an active and meritorious NGO assisting trafficked women, was originally established as a one-year pilot project by the Dutch Foundation Against Trafficking in Women (Stichting tegen Vrouwenhandel, STV).²⁰ The Centre of Migration Research, the largest interdisciplinary team of migration researchers, was set up by a few scientists recruited for the international research project run and funded by the United Nations as well as the European Commission.²¹ Recently established NGOs solely addressing migration and integration (e.g. Proxenia and Stowarzyszenie Interwencji Prawnej) have also accessed EU funds.

Relying on EU funds and donations from public and municipal authorities, most NGOs limit their scope to addressing specific problems (e.g. running shelters, providing legal and psychological support) and awareness-raising actions. Many are aimed at building an open, multicultural society and fighting xenophobia and racism in Poland's relatively tolerant society. They tend to carve out a niche, segmenting the market for migrant-related services rather than getting involved in the tough competition for available funding. By the same token, third-sector initiatives in the field are gladly welcomed by authorities, as they are convinced that NGOs should be involved with and cooperate in assistance and integration for certain migrant groups in Poland. Only a few NGOs, however, are viewed as real partners that contribute to migration policy and management.

The few attempts made so far to involve other stakeholders, such as academics and experts, have been moderately successful. Migration experts with academic titles are consulted and invited onto advisory bodies like the Government Population Council. Yet, neither their pleas for the formulation of basic principles to guide migration policy (Okólski 1998b) nor their specific recommendations on what those principles should be (IPSS 2004) have been ever implemented. Only recently has the Ministry of

Interior initiated work on the formulation of a Polish migration policy doctrine that, it is hoped, will address academics' postulates.

International organisations operating in Poland (e.g. UNHCR, the International Organization for Migration – IOM) have also been woven into the patchwork that is the cooperative segmentation of the migration sector. To some extent, this is understandable; due to the relatively small circle of migration activists and experts (e.g. lawyers), the same people circulate between different organisations, among friends and acquaintances, which tends to foster cooperation rather than promote competition. Warsaw's UNHCR office, which was established in 1992 though began assisting refugees earlier, seems to be most acknowledged in this regard. Their protection of refugees complies with international legal regulations and attracts much more attention in both the Polish media and among human rights activists than the field of labour migrants and victims of trafficking, both areas traditionally delegated to IOM.

The last group of stakeholders, seemingly underrepresented in the field, are organisations comprising migrants themselves. This is hardly surprising given the scale of inflows to Poland and the fact that settlement immigration is a relatively new phenomenon. Members of migrant groups still seem more concerned with their own adaptation and economic activities than with getting involved in politics or representing their compatriots. Some migrants' associations have been established but the most active, visible groups have limited rules. They tend to act as gatekeepers between the host society and their poorly integrated compatriots (e.g. Solidarity and Friendship, an association of Vietnamese people living in Poland), or represent religious bodies (e.g. the Muslim Association Ahmadiyya and the Armenian priesthood), or exist largely thanks to the involvement of Polish members and supporters (e.g. Refugee Association in Poland, Association for Mixed Marriages between Poles and Foreigners and the dissident Association for Democracy and Pluralism in Vietnam). A lack of institutionalised representation of migrant groups does not conform to the recommended practice of maintaining relations between the host society's public administration and the groups through official associations – let alone does it fulfil their expected role as consultants in the development of migration law. Apart from a limited number of cases, the expectations of both public administration structures and Polish NGOs active in the field of migration management appear to exceed the actual self-organising potential of settling migrants.

When analysing the context of migration policymaking, public and political discourses should be considered. The media, in compliance with its 'watch-dog' mission, tends to idealise immigrants and bemoan their traumatic experiences and difficult living conditions, rather than giving way to ethnic and racial stereotypes. Comparative content analysis of press articles published in 1996 and 2002 in major Polish newspapers and weeklies

confirmed the pro-immigrant orientation of media coverage. An obvious shift occurred from framing immigrants in terms of 'dangerous locusts' flooding the country, to emphasising their contribution to society through creativity and spirit of enterprise, a range of skills and the cultural enrichment they provide (Mrozowski 2003: 230-233). A corresponding shift has been revealed by longitudinal trends in public opinion surveys (see Łodziński & Nowicka 2003): a movement from relying on generalised group stereotypes about 'the aliens' towards specific content – gained via more frequent cross-cultural encounters – and a positive perception of 'the Other'.

Political discourse has marginalised the immigration issue and restricted it to legislative procedures in subsequent amendments. None of the political parties has taken a clear stance on immigration and migration management or included immigration-related issues in their programmes. Memory of the restrictive Communist exit policy may have discouraged politicians from public discussion of restrictions on inflows, while the high rate of unemployment among the native population runs counter to all arguments for active recruitment of labour migrants.

The general lack of interest in international migration-related matters is not surprising. To date, Poland has had no dramatic incidents, terrorist attacks or crises to attract the attention of public opinion and policymakers. Therefore, the only groups interested in stimulating public debate on migration policy are migration experts and migration- and refugee-oriented NGOs. Both groups are actually driven by the same assumptions regarding the nature of the migration process: namely, the challenge that migration represents for host societies and the desired forms and means of migration – concepts absorbed from Western democracies.

4.3 *The heralds of a change? Migration policymaking after 2004*

After 2004, the social, economic and political factors that prevailed led to some noticeable changes in migration policy and policymaking. The changing situation of the Polish labour market (falling unemployment levels, severe labour shortages noted in some sectors or regions), coupled with exaggerated media reports on the scale of emigration from Poland, created a more positive climate for policy decisions on labour immigrations. A political factor was also relevant: Samoobrona, a populist party representing popular among affluent farmers, was for the first time in the government coalition and was responsible for employment issues. At the same time, Polish farmers started to lobby more actively for the creation of a channel for legal seasonal immigration from the East. They were echoed by representatives of the construction industry. Also of importance was the nearing date of accession to the Schengen area, something bound to end large-scale legal entry of potential irregular workers from neighbouring countries

(Kupiszewski, Bijak, Kaczmarczyk, Kicingier, Kloc-Nowak & Napierała 2008). The government responded to employers' needs and between 2006 and 2009, a seasonal immigration scheme was created. Currently, workers from Ukraine, Belarus, Russia and Moldova can be employed without work permits for up to six months a year in all sectors of the economy²².

Analysing the creation of a seasonal employment scheme, we see the first potential signs of a politicisation of migration policy. Active lobbying by employment organisation (e.g. in agriculture and construction) that used *inter alia* a political party (i.e. Samoobrona) to voice their interest and create change was novel in Polish migration policymaking processes. Time will tell whether this was just an exception to the otherwise highly administrative evolution of policymaking in Poland or if it heralded a process of politicisation.

5 Migration policymaking: Co-ethnic policy after 1989

Policy addressing co-ethnics in lieu of the former exit policy was developed in the shadow of an immigration policy that was highlighted in the EU accession process. As described in the second section of this chapter, three subfields can be distinguished within the policy: the first two, anchored in the past and legitimised by nationality and ethnic claims, encompass the concepts of repatriation and maintaining contacts with the Polish diaspora and descendants scattered around the world. The third subfield, which has a much more contemporary aspect (despite not being a new concept in Polish migration policy) concerns facilitating the employment of Poles abroad and alleviating problems encountered by Polish labour migrants who rushed to EU countries upon accession. There are, of course, differences in the policymaking process according to the policy subfield, yet, in general, policy addressing co-ethnics should be described as the more 'Poland-oriented' aspect of migration policy, with less EU influence and a greater role played by political history and tradition. Unlike nascent immigration policy, lobbies appear to play a more important role, and the issues concerned are more politicised, as will be shown in the analysis.

The policy of maintaining links with Polonia – the Polish diaspora scattered throughout the world – originates in the interwar period. One of the key concerns of the reinstated Polish state was protection of Poles abroad who had thus far been deprived of any form of protection offered by a nation-state. The infamous period of PRL policy, was characterised by suspicions towards emigration and infiltrating emigrant groups. After the turning point of 1989, there was a return to the approach of the interwar period. The general line of policy towards Polonia, especially towards Polish minorities in the East, was reinstated on the wave of positive social feelings of solidarity with Poles in the East and responsibility for them. The

policy concentrated on providing support to maintain Polish identity and offering material supplies to people of Polish origin, e.g. a pool of scholarships for students of Polish origin, in-kind support for NGOs assisting these groups and educating teachers from Polish minorities (Hut 2002: 42-44). All these forms of support were provided through a specialised network of foundations, formally NGOs that dominated the relations between Poles in the East and state organs in the country.

The Polish Community Association, known as Stowarzyszenie Wspólnota Polska, took the lead among those organisations engaged in activities for Poles abroad, mainly in the East. Wspólnota Polska was established on an initiative by Speaker of the Senate Andrzej Stelmachowski, a professor who became the organisation's first president. Albeit officially non-governmental, Wspólnota Polska, like other organisations (e.g. the Semper Polonia Foundation under the auspices of the Ministry of Foreign Affairs), is in fact financed by the Ministry of Foreign Affairs or the Senat with budgetary resources that are assigned to their activities. The share of other beneficiaries, such as state-owned companies, remains very low. How foundations such as Wspólnota Polska and the Semper Polonia Foundation function represents an interesting marriage of social and state engagement, with a predominance of the latter.

The financing of these two organisations illustrates the especially strong involvement of the Senat in maintaining links with Poles abroad. This represents a clear reference to interwar period traditions when the Senat presented itself as the protector of Poles abroad and their interests. Upon initiative of the Sejm and the Senat, 2 May was declared the annual Day of Polish Community and Poles Abroad.²³ In both chambers of Parliament, special committees were set up to handle issues regarding links with the Polish diaspora, and these were especially active under centre-right coalitions. The committees prepared legislative proposals on the rights of Poles abroad, including the Karta Polaka.

The Ministry of Foreign Affairs is still the governmental organ traditionally involved in handling issues regarding Polonia and links with Poles abroad. These issues are among the ministry's fundamental tasks and responsibilities. The work is carried out by the Department for Consular and Polish Diaspora Affairs, which supervises the network of Polish consulates abroad and, along with the Senat, represents the interests of Polonia and Polish minority rights.

A politicisation of Polonia issues can be clearly seen in the revival of the debate on Poles abroad, including issues regarding Polish citizenship, when centre-right coalitions are in power. Morally founded arguments asserting the collective responsibility of the Polish state for the fate of people of Polish origin and their descendants, as well as the concept of a nation being a community based on blood ties, represent a traditional element in the patriotic rhetoric of right-wing parties.

Undoubtedly, however, the revival of links with Polonia after 1989 led to concrete positive effects. One impressive example is support shown for American Polonia during talks on Poland's NATO membership. The Polish lobby in American Congress and many famous political actors, such as US National Security Advisor Zbigniew Brzezinski, as well as pressure on Congress by the Polish diaspora, undoubtedly contributed to the US decision to admit Poland into NATO – a primary goal of Polish security policy throughout the 1990s. Furthermore, emigrants proved effective not only in political lobbying, but also in contributing to Poland's economic success through efforts to support the inflow of foreign capital to Poland in the first years of economic transformation.

A revival of the notion of repatriation became part of state policy in the 1990s. This element was closely tied to the idea of the Polish state being responsible for the fate of Poles who were not abroad by design and had been unable to return. The policy regarding repatriation – understood as a return to Poland, an 'imagined' rather than real homeland country of the people of Polish origin and their descendants from the East – reappeared on the Polish political agenda soon after the 1989 breakthrough. At the beginning of the 1990s, people of Polish origin came to Poland as 'foreigners' because of a lack of adequate legal procedures, and only later did they apply for citizenship. This form of entry proved inadequate when it came to the issues of retirement and pension benefits. Need for proper regulations concerning repatriation procedures and a delegation of responsibilities heralded serious government debate on the issues.

It is worth noting that in both public and political discourse, repatriation was never presented in the context of immigration. Symbolic exclusion of repatriates from the group of 'ordinary' labour migrants fostered the moral and patriotic rhetoric meant to legitimise a reinstatement of the official state-governed repatriation process in the 1990s.

Established in 1995, the Inter-Ministerial Group for Repatriation proposed a number of legal solutions constituting a basis for future regulations to be included in the 1997 Act on Aliens. Worth noting is the fact that, contrary to other migration policy subfields, a government programme preceded the legislative works. The two main principles of repatriation policy agreed on by the group and maintained later in the 2000 Act on Repatriation²⁴ were the individual nature of the process and geographical limitations. According to the individuality principle, repatriates could enter Poland via an individual invitation from a local Polish community and/or, after 1997, also from a private individual in Poland. The second rule restricted repatriation to people coming from certain areas – namely, the Asiatic republics of the former Soviet Union though in practice, Kazakhstan. Both limitations were justified by government officials in terms of financial constraints. These two principles were later claimed to be the main reasons for the very limited scale of repatriation in the years to come.

The Ministry of Interior and the Ministry of Foreign Affairs naturally came to be the main two players in repatriation policy. After 2001, the newly established central body under the Ministry of Interior known as the URiC became responsible for all matters relating to repatriation. Nevertheless, the actual numbers of repatriates who arrived and settled in Poland was relatively low. Regulations on facilitating repatriate integration – by offering them assistance through small local communities – became the crucial factor limiting the repatriation stream. This was due to an insufficient number of municipalities willing to host the repatriates.

Economic migration does not fit into the myth of ‘scattered sons of the motherland’ separated from their homeland by the tragic twists of fate. For a long time, therefore, neither majority nor opposition parties paid any particular attention to the phenomenon. The issue of Poles working abroad did not generate any serious problems during the 1990s. Government attempts to enable Polish nationals to find employment in the old EU countries were seen as a means to alleviate consequences of the structural mismatches in the Polish labour market during the period of economic transformation and rising unemployment levels. These issues did not trigger any political response. Nor did they elicit the involvement of any political actors apart from the government. Only the impending enlargement of the EU heralded a change in the policymaking process, as the media joined in on the political game, initiating a campaign highlighting open EU labour markets as one of the main advantages of membership in the union.

The same media did, however, set off alarms one or two years after accession. This was when gaps in the Polish labour market became apparent, notably in the health care sector and the construction industry, and numbers of Poles working abroad went skyrocketing – at least according to the media’s figures. In actuality, as researchers affirmed, the figures for post-2004 emigration could only be roughly estimated due to a lack of adequate comparable data, especially for people who had already returned to Poland after a period spent working abroad (see Fihel, Kaczmarczyk & Okólski 2006). However, an undisputed effect of media involvement was the revival of public debate regarding how to safeguard the rights of Polish people working abroad, especially in the UK and Ireland.

The ombudsman was one state organ that became actively involved in the issue of safeguarding Poles abroad. It raised the issue with other state authorities in spring 2006, and took part in numerous conferences, site visits and other activities to lobby for increased involvement of the Polish authorities in protecting the interests of citizens working abroad. The ombudsman’s activities led to an increase in the number of consuls in new destination countries, yet the idea of setting up a network of liaison officers in destination countries’ ministries of labour was not welcomed by authorities.²⁵ It is worth noting that the protection of Polish nationals working abroad is not one of the ombudsman’s statutory goals, but that the activities

in the field were undertaken on the ombudsman's initiative as a consequence of a specific 'mandatory' loophole that emerged. Furthermore, it should be pointed out that the 'new' Polish economic migrants, contrary to previous waves recruited from the group with tertiary education, do maintain links with Poland via the internet. As they maintain the right to vote, they represent an attractive target group, which was addressed not only by the pioneering ombudsman but also by political parties in the 2007 national elections.

As emigration becomes common among the new generation of Poles – and the media stays attuned to the phenomenon – the focus of policy will probably shift and the policymaking process will likely change. The dominance of well-established albeit fossilised structures of cooperation between the government and government-related organisations dealing with policy on co-ethnics should make way for more pragmatic policymaking solutions. These would need to keep in line with the needs and problems of mobile citizens in a global world with networked societies. After all, many new 'emigrants' maintain their links with the homeland within transnational social spaces, such as cyberspace, rather than through a strong attachment to 'traditionalist' associations formed by the elderly migrants of previous generations. New Polish migrant associations uniting representatives of the post-accession wave of emigration (e.g. Poland Street in the UK) will have to find their place in – and consequently transform – the old structures of cooperation between the country and its diaspora.

6 Conclusions

A systemic transformation process – and the transfer of institutional as well as ideological concepts from EU countries – establishes the context for developing migration policy in Poland. At the beginning, drawing on Western European experience of migratory inflows, it was tacitly assumed that an influx of migrants to the country was unavoidable. The former Soviet Union republics were presented as a potential pool of migrants (see Anioł 1995). Although to date, this influx has not occurred, the anticipation of future migratory processes perceived as inevitable gave rise to a new, vacant policy field. Formal and informal actors, eventually creating a network of policy actors involved in migration policymaking, started to position themselves within the field. Some were forced to enter (formal actors that somehow had to regulate the changing social situation resulting from the increased international mobility of Poles and foreigners), while others came on a voluntary basis and found attractive issues to take up as research areas or political advocacy fields.

Formal actors, namely the government and other state institutions, were in fact forced to enter the field. They were compelled either by

consequential events demanding some kind of response (e.g. Sweden turning asylum seekers back to Poland) or intense pressure from other countries as well as international migration organisations.

The main impetus for policy changes in the migration field was the EU and its accession requirements. EU impact on policy and policymaking was predominant, yet it varied in scope and power across time and according to the policy subfield in question (Kicinger, Weiner & Górny 2007). EU accession, a *raison d'être* for Polish foreign policy, enabled the union to play its conditionality mechanism during the negotiation period. In turn, Polish authorities accepted full harmonisation with the EU *acquis* in the migration field, including some solutions that were controversial in light of Polish interests. These included the refugee protection system, with the acceptance of the Dublin II regulation, the acceptance of a visa policy including introduction of visas for Poland's Eastern neighbours, as well as an all-embracing uptake of multicultural and anti-racist rhetoric in an ethnically homogeneous and generally tolerant country.

Unlike the formal actors, the other migration policymaking stakeholders – NGOs, think tanks and, last but not least, researchers and experts – gladly engaged in migration policy, looking for interesting, promising fields of activity or research. In the case of these actors, the transfer of ideology was even more advanced. Many NGOs operating in the migration field drew from the experience of their Western counterparts. They also relied on their funding to become self-specialised in human rights and migrant advocacy. Non-formal actors generally entered the field seamlessly, both from the perspective of their relations with state actors and in terms of mutual relations. NGOs and other organisations involved in migration policymaking in Poland could be compared to pioneers entering rich new lands; an abundance of things to do and the relative profundity of resources (from the EU, Western foundations and/or other governments), enabled particular organisations to settle in and carve out a promising niche in the policymaking process. Cases in point are the Helsinki Foundation, specialising in migrant advocacy, Polish Humanitarian Action and Caritas, which dominated the charity field.

EU funds, various foundations and other sources of financing guided the focus of advocacy work, humanitarian activities and, lastly, research to selected policy fields that mirrored Western experiences. They did not necessarily correspond to the Central European situation. This consequently influenced both the nascent network of policymaking actors as well as policy content itself.

Due to its limited scale and a range of other issues attracting general attention, immigration is not viewed as a major problem to be solved in Poland's post-transformation struggles. Therefore, migration policy remains a non-politicised issue – which is passed on to academics and migration experts and subjected to administrative routes of policy development.

It is therefore fruitless to try to separate out periods in migration policymaking in Poland after 1989's major turning point. No significant watershed events that could have significantly influenced the process followed. Rather, policy was developed in a smooth, organic manner, partially behind the scenes. The only development that could have suggested a turning point was creation of the Office for Repatriation and Aliens in 2001. Yet, it soon became evident that this was merely a formal change, not affecting the policymaking process.

Since migration has not yet become a politicised issue, government changes and political coalitions have not affected policy towards foreigners in any substantial way, nor has the policymaking process changed substantially. An administrative – or, more precisely, bureaucratic – approach to policymaking has been the dominant pattern despite the formal involvement of legislative organs in the process.

Undoubtedly, the non-politicisation of migration policy and policymaking is an important factor, contributing as it does to undisturbed, gradual policy change. The Westernisation of migration discourse, focusing on issues of third world immigrants or refugees, has compelled immigration policy to take precedence over emigration policy. The former thus gained in political importance, despite the fact that emigration has always been within the Polish state's scope of interests, in the interwar and Communist eras and post-1989. In reality, work to safeguard the interests of contemporary labour migrants remains modest. It has included intergovernmental agreements on mutual employment and diplomatic efforts to shorten transition periods in the context of the free movement of people. Yet, it is worth noting that this policy was developed within the context of substantial numbers of Polish nationals irregularly employed on EU-15 labour markets. In this context, it was more politically useful to focus on traditional policy on co-ethnics, anchored in a historic perspective and strongly imbued with national and patriotic rhetoric. A reopening of repatriation inflows to Poland, which could have been the most consequential co-ethnic policy decision in terms of impact on flows, did not actually have significant results. Rather, it seems the status quo in the subfield has been preserved rather than allowed to generate visible policy outcomes. This is due to both restrictive rules (e.g. limiting repatriation to people from Kazakhstan) and the various forms of mostly symbolic, rather than material, support shared with the widely scattered members of the Polish diaspora through state-dependent and state-financed NGOs.

To recapitulate, migration policy and policymaking in Poland after 1989 developed under a prevailing Western influence that affected both policy content and the nature of the policymaking process. A reorientation of migration policy from emigration to immigration issues created a new and rather vacant field. It was gradually entered into by formal state actors and conquered by other policymaking participants, who willingly found a place

in a new, promising field of activities. The smooth relocations of various organisations within the field, their peaceful coexistence and complementary nature, as well as undisturbed cooperation with government and other state actors, contributed to the evolutionary and bureaucratic manner of policymaking that dominated migration policy in Poland after 1989. At the same time, the relatively small inflows of immigrants did not raise public interest in the issue. This meant, in turn, that it was not politicised by political parties. Beyond the interest of public opinion and the interest of the political parties, Polish migration policy was relatively well developed and managed by state administration in compliance with EU requirements and with effective cooperation with non-formal actors. Recent developments related to the creation of a seasonal immigration scheme have brought some novelty to the migration policymaking process. It is too early to determine, however, whether these changes may be interpreted as the beginning of a politicisation of migration in Poland.

Notes

- 1 The chapter was written with the support of the 'Polish migration policy: Its principles and legal aspects' research grant awarded to the Central European Forum for Migration and Population Research (CEFMR) by the Foundation for Population, Migration and Environment.
- 2 Act on Polish State Citizenship, *Dziennik Ustaw* 1920, no. 7, item 44.
- 3 Foreigners wishing to acquire Polish nationality had to reside in Poland for at least ten years, be competent in Polish, have the means to provide for their family and have a clean record.
- 4 Act on the Purchase of Property by Foreigners, *Dziennik Ustaw* 1920, no. 31, item 178.
- 5 Act on Aliens, *Dziennik Ustaw PRL* 1963, no. 15, item 77.
- 6 Act on Aliens, *Dziennik Ustaw* 1997, no. 114 item 739.
- 7 *Dziennik Ustaw* 2001, no. 42, item 475.
- 8 *Dziennik Ustaw* 2003, no. 128, item 1176.
- 9 Article 97 explicitly recalls the provisions of the Convention on Human Rights and Fundamental Freedoms of 1950. It specifies that a permit for tolerated stay may be issued if expulsion would endanger the foreigner's life, freedom, personal security, or should he or she would be subject to torture or inhumane or degrading treatment or punishment, be forced to work, be deprived the right to a fair trial or be punished without any legal grounds.
- 10 *Dziennik Ustaw* 2008, no. 70, item 416.
- 11 Law on Employment, *Dziennik Ustaw* 1989, no. 75, item 446.
- 12 Persons able to prove their Polish origins before the Polish consul could be granted a repatriation visa, with the right to enter Poland and acquire Polish citizenship upon crossing the Polish border.
- 13 *Dziennik Ustaw* 2000, no. 106, item 1118.
- 14 The Constitution of 1997 granted the right to settle in Poland to every person whose Polish origins could be proved before the Polish consul (article 52.5).
- 15 <http://www.powroty.gov.pl>.
- 16 *Dziennik Ustaw* 2001, no. 42, item 475.

- 17 This regulation is a continuation of PRL regulations from when issues of Polish citizenship were within the purview of the Council of State, a formal collective head of state.
- 18 Act on Polish Citizenship, *Dziennik Ustaw* 2000 no. 28, item 353.
- 19 <http://www.hfhrpol.waw.pl/en>; accessed 3 January 2007.
- 20 http://www.strada.org.pl/index_en.htm; accessed 3 January 2007.
- 21 <http://www.migracje.uw.edu.pl/index.php/Project/Causes>; accessed 3 January 2007.
- 22 *Dziennik Ustaw* 2009, no 21, item 114.
- 23 'Ustawa z dnia 20 marca 2002 r. o ustanowieniu 2 maja Dniem Polonii i Polaków za Granicą'; *Dziennik Ustaw* 2002 no. 37, item. 331.
- 24 Act on Repatriation, *Dziennik Ustaw* 2000, no. 106, item 1118.
- 25 Schedule of ombudsman's activities for Polish nationals working abroad (<http://www.brpo.gov.pl/index.php?md=1688&s=1>).

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Conclusion: Comparing the making of migration policies

Giovanna Zincone

1 Introduction

As the introductory chapter of this volume stated, there is substantial literature on migration and immigrant policies, but very little¹ on the processes by which such policies come about.² The contributors to this volume are trying to take a step towards filling that gap. We have done this in the first place by presenting as case studies ten analytical chapters on European countries and their immigration and integration policymaking in recent decades. These country reports are based on a common analytical framework that is, in turn, derived from a state-of-the-art study that I co-wrote (Zincone & Caponio 2006).³ In it, the literature review was structured according to levels (national, local, international – notably at the EU level), directions of interactions between those levels (top-down, bottom-up, horizontal) and relations between public actors and civil society, which is commonly accepted as a second meaning of top-down.

Our review took a multitude of actors into consideration. We looked not only at the traditional legislative powers of the state, but also the informal activities of formal actors, such as de facto legislative initiatives by civil servants and the innovative interpretation of the magistracy, particularly supreme courts. Semiformal actors, such as unions, employers' associations and representatives of religious denominations, and informal actors, such as pro- or anti-immigrant movements, NGOs, think tanks and experts, were also defined as being potentially relevant for policymaking. The labelling of actors as formal, informal and semiformal may vary in different countries: employers, trade unions and churches can be classified alternatively as informal or semiformal actors, depending on their level of inclusion in the public decision-making process.

All these elements formed part of the common analytical frame for the country cases. In this chapter, I will try to deepen the scope of the comparative analysis. I will do this in a somewhat unorthodox way, not by summarising the preceding chapters, but by asking two fundamental questions on comparing policymaking. The first refers to the question of change or continuity in policies and the factors and actors that provoke or inhibit

change. The second asks whether there is convergence, and what policy-making factors and actors stimulate or inhibit convergence. Policymaking is the ‘machinery’ that produces the policies whose similarity and dissimilarity, convergence and divergence I am trying to detect. The policies are the *explanandum*, or what we have to explain, while the actors and factors involved in their making are the *explanans*, or that which does the explaining. Let me start off by explaining this approach and these questions in more detail.

My analysis is focused on similarities and dissimilarities and on convergence and divergence of immigrant and immigration policies in ten European countries. The first aspect concerns the dimension of space, i.e. the different levels of a political system in which policymaking can be observed. The second aspect concerns the added dimension of time. In other words, I will start by attempting to single out which factors and actors have played a role in causing policy similarities or dissimilarities in the past. I will then look at how these actors and factors have been transformed (or not), and how they and other new factors and actors have intervened to produce convergence or divergence among policies in different political systems at different levels.

Trends towards convergence or divergence, similarities and dissimilarities change over time, which means we need to establish a *terminus a quo* (t_0) and a *terminus ad quem* (t_p) within the scope of our analysis. While preparing the chapters, we decided to focus mainly on recent times, more or less on the past ten years. Nevertheless, we also found it necessary to trace the evolution of policies and policymaking back to their ‘genetic phase’: the moment the arrival of immigrants and problems deriving from their presence forced decision-makers to respond with policies. As a result, the periods analysed in the chapters vary according to the different evolutions of migratory processes found in each country.

1.2 Time and change

Time can be conceptualised in two ways. Firstly, it may be seen as time in progress, during which policies can undergo persistence and continuity, evolution or involution (a return to the past). In such a perspective, crucial turns – hiatuses in a policy trend – may also occur. Secondly, time can be conceptualised as revolving or ‘circular’, a sense of time that captures repetitive behaviour in recurrent political cycles. This is the case, for example, when political parties take a certain stance while campaigning and into the very beginning of the legislature, they change the policy lines once well established in power and then change again as new elections draw near. I will interpret the phenomena observed (persistence, changes, turns, evolutions, involutions, cycles) according to the following approaches.

Change and continuity are commonly explained by adopting different analytical tools. Change is usually explained by making a more or less conscious use of a systemic approach. In this perspective, changes are responses to the need to cope with new inputs, new challenges deriving from the transformation of the context in which decisions are made. For instance, huge inflows and dramatic events force decisions. According to this approach, which originates from an input-output paradigm,⁴ decision-makers react more than they act, albeit through the filter of their ideological frame.⁵ By contrast, in a cultural-elitist mentality, changes result from the capacity political and cultural elites have to conceive and propose innovative interpretations of a situation – a new framing – that can provoke or contribute to policy turns.⁶ Here, decision-makers are considered entrepreneurs. The cultural and symbolic dimension is then highlighted. Innovative political entrepreneurs can play with symbols. They might, for instance, revive worn-out traditional religions as a component of national identities to underscore the alien character of new Muslim communities. Or, on the other hand, they might present immigration as a needed element in order to contrast demographic and economic decline.

A ‘rational action’ paradigm can be used to explain recurrent policy cycles. In this framework, political actors aim to optimise their chances of being elected or re-elected, and consequently tend to promise popular measures and avoid passing unpalatable policies when elections are imminent. Nonetheless, the rational action approach is also fitting to explain changes, not just recurrences. Political actors compete for votes and may modify their policies – even their ideological equipment – to maximise voting outcomes or their coalitional potential and consequent chances to become partners in a majority. It is not surprising that the theory was invented in the milieu of economics.⁷

By contrast, specific attention to continuity instead of change is rooted in a normative action approach that is more often adopted by sociologists, as Barry ([1970] 1988) pointed out years ago when comparing economic and sociological paradigms. According to this understanding, all social behaviours, including the political, are conditioned by context, by values and norms that are, in turn, shaped by past events and historical and legal legacies.⁸ In this chapter, I will make syncretic use of the various approaches without necessarily referring to them specifically.

1.3 *Space*

Like time, space has several interpretative conceptions. Similarities and convergence or their counterparts can be detected at the different levels of political systems, such as countries, regions, districts or municipalities; they may refer to broader sets of political systems, such as Southern versus Northern versus Central Europe; former Communist countries versus other

EU countries; old immigration countries versus new or almost new immigration countries; border countries versus countries that are distant from sources of immigrant inflows; transit countries versus destination countries. Similarity may also be associated with 'trans-state nations', those states or regions within states that share cultural traditions. This is the case with some similarities across Austria, Germany and the German-speaking cantons in Switzerland, as we see in this volume, as well as with the policy imprint of France on francophone Wallonia in Belgium, or that of the Netherlands on Dutch-speaking Flanders (Adam & Martiniello 2008).

Newly shared factors can produce similar policies in a set of countries. The 1973 oil crisis and its ensuing impact on the European economy provoked attempts in several countries to protect national labour by encouraging repatriation of immigrants and by proclaiming 'zero immigration'. The economic recession that began in the late 2000s is producing similar effects. Shocking events – such as 9/11, the 2004 Madrid train bombings, 7/7 (the London bombings taking place a year later) and the assassinations of the Dutch politician Pim Fortuyn and the Dutch film-maker Theo van Gogh – can impact many political systems. They have the potential to produce wide convergences, even if the events take place in only a few countries; together they signal a highly relevant transnational phenomenon – in this case, of global terrorism. Immigration flows may also change direction because of demographic and economic imbalances, the rise and fall of political regimes, state secessions and fusions or political unrest, turmoil and/or economic crises.

Space may be – or may become – relevant for politics and migration over time, in a quite literal sense, as state borders shift or new independent states are established. Sometime, too, states stay the same but a conflict winner takes part of a loser's territory. As a consequence, the status of a number of people may be redefined without those concerned actually being transformed (i.e. via *migration sur place*) into aliens. This was the case for ethnic Russian minorities, once USSR citizens but now considered aliens or, even if naturalised (which is challenged by the imposition of a language knowledge requirement), are deprived of certain rights, such as being able to use their mother tongue as an official language in Latvia and Estonia; former citizens may become welcomed as immigrants, which is what happened with Slovaks residing in the Czech Republic. Introduction of the Schengen Area put stress on those member states forming its new external borders.

On the other hand, space also counts in a more immaterial way through the movement of ideas, such as the 'import and export' of migration policies over time. The direction of cultural and political influence and the consequent diffusion of policies and policymaking models through that space move according to the perceived success or failure of migration policy models. While it is possible that no country can objectively be labelled

a 'success' (Guiraudon 2008; Joppke & Morawaka 2003), some nations are regularly held up as paragons, despite their actual policy failures. On the other hand, the role of positive protagonists leading the policymaking narrative may change in time according to relative perceptions of 'better' performance. Political models that were once considered paragons can in fact become seen as experiences to avoid (for example, the multicultural policies – be they real or presumed – once found in the Netherlands and the United Kingdom). Conversely, criticised models, such as French Republican assimilationism, can be looked at with increasing interest, particularly by countries such as the Netherlands and the UK, now seen as abandoning multicultural models. And still, the political influence one country has on another can also persist over time, as in the case of the United States on British immigration policies (Joppke 1999).

I have attempted to single out which actors and factors – under which conditions – are likely to produce more persistence or more change, and which changes are more or less likely to generate convergence. In doing so, I propose a sort of menu of explanatory factors, albeit non-exhaustive and eclectic. The next section looks at actors and factors that are assumed to bring about continuity rather than change.

In the second section, 'Historical and institutional legacies', I will focus on a list of features inherited from the past that affect at least the first phases of immigration and integration policies and their making, and are generally assumed to promote persistence and continuity rather than to cause change within a given political system. Such actors and factors of persistence within the same system may 'freeze' similarities and dissimilarities among different systems, and thus prevent convergence. Nonetheless, I will also pinpoint their non-deterministic effects as well as their possible evolution and dismantlement over time.

This is followed by the third section, 'Pilots of policy change', where I deal with factors and actors that drive changes such as the rise of new regimes, new parties coming to power and the impact of dramatic events. Here, the question as to whether change leads to convergence or not is an open one.

'Co-pilots navigating between continuity and change' is the fourth section, where I turn to the disciplining actors and factors that accompany decision-making, sometimes promoting or reinforcing innovation while at other times opposing it, and sometimes favouring immigrants' rights while at other times restricting them. Since their influences' potential direction is uncertain, their impact on convergence is uncertain as well. These factors and actors are positioned at an institutional level (e.g. the federal form of the state), at the governance level (e.g. the case of consensual government) or in public bodies (e.g. the judiciary system or the public administration, which should not, according to constitutions, be formally devoted to law

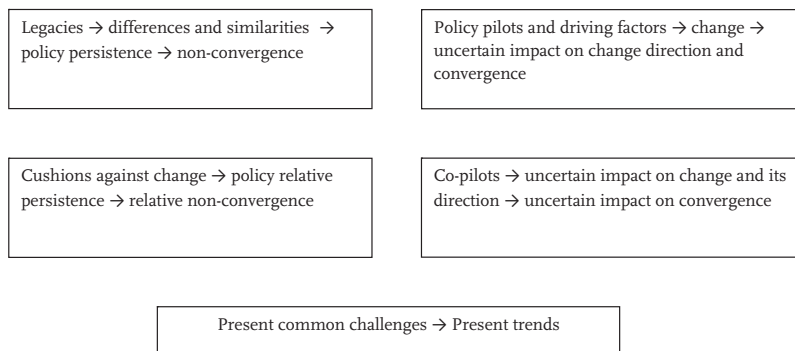
and/or policymaking). The factors can also be placed in civil society, such as with anti-immigrant movements, pro-immigrant lobbies or unions.

Under the title ‘Cushions against radical change’, the fifth section deals with actors and factors that do not promote continuity, but just moderate changes or make it more difficult for them to take place, mainly by contrasting or balancing the action of the majority in power. Since cushions moderate change, they are unlikely to promote the changes needed to converge.

In ‘Converging trends and contradictory developments’, the chapter’s penultimate section, I will change point of view, asking which macro-developments common to, or influential on, all systems could work to produce convergence of policies, now or in the near future. Common EU policies are an important factor, though certainly not the only one, since they often follow policy line changes in the more influential EU countries.

To conclude, I will make some intentionally challenging observations.

Figure 11.1 *Why persistence or change? Why divergence or convergence?*



Source: Author’s own elaboration

2 Explaining persistence and continuity: Historical and institutional legacies

Actors and factors that foster persistence and continuity may be of different origin. A first category is composed of features of societies or political systems inherited from the past that have an effect on immigration and immigrant policymaking. They can be considered historical and institutional legacies. Reviewing the preceding chapters, we see a number of these features. Historical and institutional legacies can lead to policy persistence and continuity within single political systems. If they do so, they may also perpetuate similarities or dissimilarities between systems or sets of systems, depending on the configuration of the legacy in the various countries.

Nonetheless, legacies' effects on the decision-making mechanism do not necessarily work in favour of policy continuity. This is the case with general institutional legacies that favour the decision-making capacities of the system, for instance, granting governments large and stable majorities, and consequently providing space to innovative policies and changes. Other institutional legacies that render government decisions more difficult to make, such as referendums, are likely to act as cushions against change; still others, such as rigid constitutions and supreme courts, can alternatively favour or impair changes by imposing decisions and invalidating those that go against constitutional norms. In this section, however, I will treat only those legacies that have affected the content of immigration policies for a long time, generating continuity and stable differences. I will also start showing the impacts of their possible disruption, which, by contrast, cause discontinuity and change.

2.1 *The colonial past and traditions*

Colonial experiences and the legal and institutional treatment of colonial territories are a good example of past legacies that can affect subsequent immigration flows and immigrant policies. Former colonial territories tend to supply consistent migrant flows into the countries that once ruled them. This has been the case for inflows to Spain and Portugal from South America, to Britain from India, Pakistan and the British Caribbean Islands, to the Netherlands from Suriname and Indonesia, and to France from former colonies in North Africa, the Sub-Sahara and South-East Asia. Special legal status is often given to nationals of former colonies, and can include preferential treatment in immigration, access to naturalisation or reacquisition of citizenship. Such is the case with France, Spain and Portugal (Bauböck, Ersbøll, Groenendijk & Waldrauch 2006a, 2006b). This is particularly prevalent in former colonies that are largely populated by co-ethnics – descendants of the former colonisers – as in the cases of Spain and Portugal. Also, voting rights at the local level are often granted to nationals of former colonies before other immigrants.

Pressures to immigrate from former colonies can cause problems. In the Dutch case, inhabitants of the former colony of Suriname could – and did – claim Dutch citizenship during a transition period, between 1975 and 1980, which boosted their immigration to the Netherlands (Bruquetas-Callejo, Garcés-Mascreñas, Morén-Alegret, Penninx & Ruiz-Vieytez this volume). Past legacies can encourage special relations. The prevalent Maghrebian composition of France's immigrant population still steers international relations to bilateral agreements between these North African countries and France (Withol de Wenden this volume); this was one of the factors that contributed to the Union for the Mediterranean's foundation on

14 July 2008, which was fervently promoted by the French EU presidency, though less welcomed by other EU members.

The process of decolonisation and unexpected immigration flows caused by the Indian and Pakistani minorities being expelled from newly independent East Africa in the early 1970s strongly affected British immigration policies. These processes of independence and the new immigration flows (made up of then British subjects) forced the UK to gradually revise the direct relationship between 'the Crown and its subjects' and eventually adopt a modern nationality law connected to birth in the state territory and descent from persons born or residing there. Immigration law reform came before the reform of nationality. The fairly differentiated legal statutes of various territories, dominions and Commonwealth members were partially reflected in differentiated entitlements to enter the UK under the 1971 Immigration Act. The law, passed in order to curb inflows of unwanted immigrants, embodied a sort of legal paradox. 'There were citizens of the United Kingdom and colonies who did not have the right of abode in the UK and citizens of independent Commonwealth countries who did' (Blake 1996: 688). Citizens of excluded territories were given the right of abode only if they were 'patrials', i.e. born to a parent who had been born in the UK. Only these same selected categories saw their status of nationals recognised in 1981 (Blake 1996; Hansen 2001; Dummett 2006).

On the other hand, the same imperial past generated bonds between Britain and its former colonies (Australia, Canada, New Zealand and the US) that still persist, including close international relations. In the field of immigration and immigrants' rights, this may even lead to the imitation or importation of pieces of legislation stemming from 'related' countries, as indicated by Cerna and Wietholtz in this volume, referring, in particular, to an immigration policy reform that adopted Canada's point system.⁹

The possible impact of colonial legacies can also be traced back to the different features of European colonialism. These include the different levels of administrative and judicial power delegated to the native authorities and the levels of autonomy granted in matters such as family laws and the legal status of individuals. A past propensity or reluctance to delegate to native authorities affected the attitudes towards immigrant minorities and their organisations in different ways later on. In the beginning, the nature of the Dutch and British empires was primarily economic (i.e. the exploitation of raw materials and commercial goods), and their early territorial settlements were operated by companies. In the case of the Netherlands, the public government only lasted from 1880 to 1940. Both countries adopted an indirect rule – they devolved part of the jurisdiction to native or inland authorities and allowed local norms to govern family and social relations (Bryce 1901; Delavignette 1982). Later, they were both more prepared to entrust relevant functions to immigrant organisations. Conversely, the more state-oriented French colonialism included a citizenship status given to

those natives who were prepared to accept the ‘civilising mission of France’, namely, to learn the language and to be loyal subjects. Full citizenship was given to all Algerians, and their territory became part of the French Republic. The special status of descendants of those who were nationals before Algerian independence lasted after independence (Weil 2001b: 52-68). Other overseas territories became departments of the French Republic according to the 1946 Constitution, and their inhabitants still enjoy full citizenship and political representation in French Parliament. In sum, different governance styles of empires and different paths of decolonisation have had a crucial impact on even fundamental laws, such as those concerning nationality, and they still affect the present status of some minorities of immigrant origin.

2.2 *The state, prevalent religions and religious minorities*

Similar observations apply to past relations between the main religion or religions, religious minorities and the state. All contemporary liberal states respect individual religious liberties and would thus seem to converge towards a sort of common European model. This common pattern includes a set of values and principles, such as the protection of religious freedom and the individual rights that come with it, the lack of state jurisdiction on religious matters, the autonomy of religious denominations and the cooperation between states and religious faiths (Ferrari 2003). Nevertheless, respecting religious freedom rarely implies equality of religions or full non-intervention by the state. Privileges are still reserved for the majority religions, and states still claim to have a say in religious matters. Past relations between states, on the one hand, and majority denominations and religious minorities, on the other, may transmit significant legacies that mould the treatment of religious minorities of immigrant origin – of Muslims, in particular. We can distinguish four main models for religious accommodation, shaped by their respective histories, though transformed over time and further adapted in the face of more recent events:

- 1) separatism, which is essentially separation between religion and state
- 2) formal state religion or religions accompanied by toleration of other denominations and pluralism
- 3) former state religion that still enjoys hegemony and has a concordat, possibly extended in non-egalitarian form to other religions
- 4) a persisting strong hegemony of the majority religion or religions as a crucial source of national identity.

In Europe, the only country to have adopted the first model is France. Unlike the other eminent case of separatism, the US, France chose this solution as a public strategy to emancipate the state from the Catholic Church, whereas American separatism’s motives were exactly the opposite: to safeguard religions from state intrusion. Present French secularism is

thus rooted in a deep tradition of vindicating state sovereignty. As early as the Ancien Régime, the Catholic Church in France had to submit its main decisions and appointments for royal approval. The secularism principle is a modern evolution of the supremacy of secular power over clerical power; it found an extreme application during the French Revolution, was moderate during the two empires that followed and became common practice with the 1905 French Law on the Separation of the Churches and State. This tradition allowed the legal and ideological apparatus to definitively ban ostentatious religious symbols from public buildings in 2004. The real target of the 2004 law was the Islamic headscarf, since other religious symbols were widely tolerated until the scarf started to provoke conflicts in French public schools (Withol de Wenden 1998). The headscarf was also seen as a symbol of women's subjugation, often imposed on girls by traditional religious families. Prohibiting the burqa and niqab in 2010 was similarly motivated, more in defence of women's dignity and the French principle of secularism than out of a fear of possible threats to public order.

Europe's Protestant Belt – the UK and Northern Europe – once followed the second model of religious accommodation. Countries were characterised by a state religion, or more precisely by religions prevalent in civil society and consequently imposed on the monarchy and the state. Let us recall the rebellion of British Parliament, representing the erstwhile Protestant civil society, against the Catholic kings and crown princes in Britain, and appointment of the foreign-born Protestant king William of Orange and his spouse Mary. All Protestant countries, not just Britain, established the principle that the religion of the prominent social class should be the religion of the king and of the state – not vice versa. In these political systems, the strong tie between religion and state, as well as the political role of the monarchy in the institutional system, weakened over the course of time, though it did not disappear altogether. The dominant role of the official religion was reduced but not destroyed; to this day, it can be revived to re-establish the hegemony of the national culture over those of newcomers, as illustrated by the Danish example. The 1849 Danish Constitution, which established religious freedom, simultaneously declared that the Evangelic-Lutheran Church is the people's Church and is supported by the state as such. The strong identity link between the people's religion and the nation became embodied in the 1855 law stipulating that the educational system would be based on religious organisations funded by the state. Later on, this same system enabled the relatively small Muslim minority in Denmark to establish the highest number of Islamic schools in Europe (Jensen 2007). More recently, however, one of the Danish system's dormant traditions was brought back: the Lutheran clergy's power to vote on the appointment of ministers from other denominations. This was re-established in order to control imams (Jensen 2006).

In a similar vein, public education in the UK was initially delegated to the main religious congregations. Traditionally, Catholic, Anglican, Nonconformist and Jewish schools have covered about 85 per cent of their running costs via financial support from the state, something that makes it difficult to deny financial support to Islamic faith schools. So after lengthy struggles, state-funded Islamic schools still exist today. Nonetheless, although under Thatcher the UK reintroduced Christian religious discipline in school programmes with the main purpose of counteracting secularisation, the measure proved to function as a welcome reinforcement of Christian religion versus imported alien creeds. Catholic countries such as Austria, Italy and Spain – or those with a partial Catholic tradition, such as Germany – follow the third model of religious accommodation. They adopt concordats with the Catholic Church and extend such a strategy of agreements to other religions. But this strategy encounters specific difficulties in including Muslim minorities because Islam does not have a church-like structure with official representatives and is in fact composed of many streams that compete with each other. The prominent role played by radical components is another challenge. Nevertheless, some of the rights of recognised religions have also been granted to Muslim minorities. In Germany, for example, the ability to teach religion in schools was extended to Turkish Muslims (Rohe 2004). More recently, during the third German Islam Conference, taking place in March 2008 in Berlin, the Minister of Interior recommended a nationwide law that Islamic classes be taught in the German language.¹⁰

The legacy of Muslim domination in Spain had a positive impact on this religious minority. Acknowledging the contribution Islam has made to national culture, the Spanish state signed a concordat with a network of Muslim denominations in 1992, which coincided with the 500th anniversary of the complete Catholic recapture of the Iberian Peninsula (Matecón 2004).

In the case of Austria, Islam has maintained the legal status it enjoyed under the former empire, even though state borders changed after the country's defeat in World War I. The law of 1912, which recognised the rights of Muslims of the Hanafite creed in the empire, has never been formally repealed. This law forms the basis of the current recognition of the Islamic community in Austria, which equates Islam with other traditional denominations (Wieshaider 2004).

Strongly associating Orthodox Christianity with national identity and the subordinate position of all the other denominations, including Islam, Greece¹¹ is an example of the fourth model of religious accommodation. Still in force as late as 1998 was article 19 of the Greek Nationality Code, which doomed non-Orthodox Greek expatriates to lose their nationality if they left the country 'with no intention of returning' (Christopoulos 2006). Unlike the country's dominant Orthodox identity, descendants of traditional

Muslim enclaves residing in Greek territory can rely on the protection of international treaties (Constantinople, Athens and Lausanne) and enjoy a treatment similar to that provided in the pluralistic Ottoman Millet system, with the attribution of judicial powers to the Mufti. Even if the Greek government attempted to win back legal sovereignty and uniformity in its territory with the 1990 reform, Islam still enjoys a certain degree of autonomy (Tsitselikis 2004).

Romania is another country with strong Orthodox and Catholic traditions in which Islamic minorities have lived for centuries. The Communist policy of forced assimilation for national minorities and its authoritarian secularisation of society as a whole seemed to have weakened religious attitudes. After the Communist regime's fall, however, Catholicism and Orthodoxy were able to reacquire some popular consent. By contrast, traditional Islamic minorities were unable to re-establish themselves, and the 'new Islam' of immigrants and asylum seekers appears to be missing from the political agenda of decision-makers (Iordache 2004).

2.3 *The state and the working class*

Immigrant policies have not only been shaped by the previous treatment of religious matters, but also by the way in which the working class has been incorporated into society. Incorporation has followed different paths in various European countries (Therborn 1977; Turner 1992; Zincone 1992, 1999a), with different roles played by the state and civil society. Organised civil society, namely churches and workers' unions, played an important role as early providers of public education and social security in many European political systems. That said, the level of delegation of public functions to civil society organisations and the control of the state over organised civil society has varied significantly. Public control proved stronger in systems in which the state played a dominant role, such as Prussia and, later, Germany, than in countries like Britain or Sweden. In its genetic phase, Germany could be considered a 'statist from above' integration model, in which church and workers' organisations were repressed and mollified (Zincone 1992, 1999a). Eventually, however, workers' and employers' unions were incorporated into public decision-making. Bismarckian Germany adopted a strategy of direct incorporation of the working classes. First repressing the unions, then co-opting them, it represented a first tentative example of neo-corporatist governance (Bauböck 1991; Flora & Heidenheimer 1981). In due time, unionised immigrants also became involved in the decision-making process, albeit in a subordinate position.

Britain had already overcome the religious conflicts and mollification of working classes before entering the phase of suffrage enlargement, which made it easier for the state to delegate part of its social functions to mutual

aid societies and, as already mentioned, to majority denominations, without strict public control but within a political and social system still strongly influenced by upper classes. We can consider nineteenth-century Britain a 'societal from above' model of integration (Zincone 1992, 1999a) since it devolved relevant matters to workers' leagues and unions, only loosely controlled by the state, without undermining aristocratic and bourgeois hegemony. In contrast, the Swedish case can be characterised as 'societal from below': here working-class unions and parties started earlier and lasted longer, and this endowed them with a stronger leading role. The management of pensions by unions also lasted for a long time in Sweden (Zincone 1992, 1999a). Past incorporation models of national working classes affected the first steps of the immigrant policies in these societal countries, with a strong emphasis on pluralism and associations.

France is an exception in this respect as well. The French Revolution had firmly established the penetration of the state in civil society and the centralisation of the administration, which, as Tocqueville noticed, had already started under the Ancien Régime. With the Revolution, the process was completed in a radical way. The traditional powers were dismantled and substituted by the republican central government (Tilly 1975), and the Catholic clergy was first submitted and then dismissed. The Revolution aimed at empowering social classes disregarded by the Ancien Régime. We can consequently define it as a 'statist from below' totalitarian model (Zincone 1992, 1999a). The Restoration, following the defeat of Napoleon Bonaparte, only slightly rebalanced the power of organised civil society with respect to the power of the central state.

2.4 *Segmented societies and consociational practices*

Consociational practices that were adopted in the past to accommodate different groups – religious or otherwise – such as in the case of Dutch pillarisation, were a model for the 1970s and 1980s adoption of a multiculturalism *avant la lettre* (Bruquetas-Callejo et al. this volume; Rath, Penninx, Groenendijk & Meyer 2004; Sunier 2007; Zincone 1999a). Although a secularisation process led to crisis in the pillar system during the 1960s, and in spite of the fact that the 1983 constitutional reform abolished the preferential link between the state and the main religious communities, this process of 'depillarisation' did not remove the opportunity for Muslim and Hindu communities to establish their own state-funded schools, broadcasting companies and other facilities (Sunier 2007). Even later attacks on multicultural policies considered too lenient by anti-immigrant groups have not dismantled these opportunities.

2.5 *Authoritarian pasts and anchors of democracy*

Core features of political systems that are relevant to migration policies are shaped by another often underestimated legacy: the interrupted path to democracy. Authoritarian regimes were followed by legal reactions aimed at strengthening individual and group civil rights. Italy, Germany and Austria are cases in point after World War II, as were Portugal and Spain later on, and eventually some of the former Communist countries after 1989. Those rights were embodied in rigid constitutions that were difficult to reform and protected by independent supreme courts. In addition, international treaties and agreements protecting those rights are often subscribed to in such situations of change, as in the cases of the Czech Republic and Poland, respectively illustrated in this volume by Čaněk and Čížinský and by Kicingier and Korys. This legal protection may, in time, be eroded by public anti-immigrant attitudes, xenophobic parties and the fading memory of authoritarian regimes.

2.6 *Emigration experience*

Past emigration experiences and their interpretation in the national public narrative are other factors that can influence the perception of new immigration and immigrants' presence in the receiving country, at least in the early phases. Emigration has taken place in the majority of European countries (Hatton & Williamson 1998), though the phenomenon has been perceived and conceptualised in different ways. Germany and the Scandinavian countries do not self-represent as past emigration countries. Their migratory history was soon blurred by more recent immigration experience. By contrast, the emigration country imprint is still lasting in the cases of Italy, Spain, Portugal, Greece, Ireland and Poland. This is due to the relatively recent nature of immigration and the significant dimension of past – and in the case of Poland – also present outflows (SOPEMI 2007; Pugliese 2006). Self-representing as a country of emigration implies a more open policy towards immigration flows if and when becoming a receiving territory, as was the case in Southern Europe.¹² These countries have been more tolerant towards illegal immigrants; they often introduced regularisations and amnesty programmes (GCIM 2005); they have used planned immigration quotas to regularise undocumented immigrants already living in the country; and they were more inclined than other European countries to extend rights to illegal immigrants.¹³ Such pro-immigrant attitudes are rapidly changing, which is the subject of this chapter's last section on convergence and common present trends.

Emigration countries that are just experiencing immigration, such as Poland (which is also becoming an immigration or transit migration country),¹⁴ and past emigration ones, such as Spain and Italy, have both

adopted preferential treatment of former emigrants or co-ethnics in nationality laws¹⁵ and preferential admission or readmission to the territory. Comparable policies have also been adopted by some countries whose 'nationals' live outside the country boundaries.¹⁶ Generosity towards co-ethnics tends to persist or to be discontinued depending on the advantage that those inflows bring to the national economy. Return migration is not always productive, as is shown by the contrasting cases of Germany, Poland and Hungary versus Ireland. The need to cope with the side effects of co-ethnic policies can be seen as a factor of change that has already taken place in Poland, Germany and Austria, as reported in the corresponding chapters in this volume. It is starting to signal alerts in Italy as well (Gallo & Tintori 2006).¹⁷ The ongoing impact of the economic crisis and its potential worsening can also affect this privileged immigration.

An early immigration past may shape nationality laws as well. France invented and, in a well-timed manner, introduced the so-called double *jus soli* law, according to which children born in France to alien parents who were also born in France automatically become French citizens. The measure was introduced to prevent young people of immigrant origin born in France from escaping military service, as those who were exempt from conscription had an unfair advantage as far as work and marriage were concerned. The double *jus soli* law was later adopted – for different reasons – in other European countries such as the UK, Belgium, Spain, Portugal, Greece, and it has often been proposed in reform bills in Italy, Germany and Switzerland.

3 Pilots of policy change

Actors and factors of change are to be found in different sectors of political and social systems, at both national and international levels.

3.1 *Party systems and politics*

Some party systems appear more apt to allow straight decisions and possibly produce changes. Hegemonic parties or large, homogeneous coalitions that can count on a consistent electoral and parliamentary consensus can proceed without bargaining with the opposition to pass more innovative measures, producing changes. The direction of the change depends on the context and on the attitude of the majority. In comparison with other national policies, the ensuing convergence or divergence depends on being more or less in tune with the main international stream, with the policy orientation prevailing in other countries.

Changes in the colour of the parties in power are the most obvious factor of policy turns. The width of the turn depends on the positioning of the

immigration issue in the new majority and government agenda, as well as on the level of discrepancy between past and new majority attitudes. This has been the case for France, where reforms and counter-reforms have accompanied the changing parties in power (Weil & Spire 2006). After garnering electoral success in 2008 through a promise to control illegal immigration and criminality of immigrant origin, the fourth Berlusconi government gave priority to repressing illegal immigration and introducing certain limits on immigrant rights. Politics matter particularly when strongly anti-immigrant parties are present in governmental majorities. These political components are likely to produce relevant changes, as has actually happened in the Dutch, Danish, Austrian, Swiss and Italian cases. In February 2000, the formation of a coalition government in Austria between the conservative People's Party and the populist Freedom Party (Schwarz-Blau), brought a major change not only in national immigration and immigrant policies, but in the whole political system as well (Kraler this volume). As D'Amato recalls in his chapter in this volume about the Swiss Peoples Party:

The SVP, formerly a moderate peasants' party that transformed in the early 1990s into a radical right-wing populist political organisation, won the biggest share of parliamentary votes in the 2003 general elections. This upset the traditional consociational system that, since 1959, evenly distributed power among what were then the four leading political parties and in which the SVP before had only access to one seat. Following the elections in December 2003, as leader of the SVP, Blocher gained for the first time a second seat in the government and became Minister of Justice and Police, which also put him in charge of migration and asylum. Thus far, the government approved several of the Minister's proposals to deal with illegal migration, undocumented workers, asylum law abuses and unsatisfactory international cooperation concerning the readmission of rejected asylum seekers.¹⁸

In their chapter in this volume, however, Cerna and Wietholtz remind us that xenophobic stances have not always been rewarding. As they state, in the second part of the 1960s:

a long-lasting consensus evolved in the UK that openly racist remarks and 'playing the race card' in political campaigns would be unacceptable. This acknowledgement was exemplified by a high-profile incidence in 1968, when the British politician Enoch Powell was sacked by the conservative Leader of the Opposition Edward Heath's shadow cabinet the day after Powell gave his 'Rivers of Blood' speech. In it, Powell had vehemently warned against the

introduction of anti-discrimination legislation (a race relations bill proposed by the Labour government).

In the present political context of Europe, however, it is less likely to see politicians or political parties penalised because of their xenophobic attitudes.

As we underscore the relevance of politics, we should also evaluate to what extent politics are events-driven. Do politics matter more than events? Bruquetas-Callejo et al. in this volume seem to think so, maintaining that in the Netherlands dramatic

events reinforced a new mode of policy discourse, described by Prins (2002) as 'hyperrealism'. This entailed a shift from the 1990s 'realist' style of discourse – demanding a 'tough' approach to integration so as to turn immigrants into full citizens – to a type of discourse in which 'being tough' became a goal in itself, regardless of its potentially problematic amplifying effects. As such, it could be argued that Fortuyn, and later, erstwhile Minister for Aliens Affairs and Integration Rita Verdonk, used the immigration and integration issue to flaunt their 'tough' approaches to the political establishment and, in so doing, to promote their own places in Dutch politics.

In this opinion, it is the political entrepreneur who thus reframes the issue to exploit dramatic events as opportunities.

In my view, the relation between events and political actors is variable. Sometimes, events do force – or at least strongly influence – political action. Sometimes, politicians use events as opportunities to promote their preferred policy lines. Political actors can even deliberately allow dramatic events to happen or decide to fabricate them (though hopefully this is rare in democratic regimes). The Dutch thesis, however, is appealing because it helps in explaining a certain set of changes and can also be applied to pro-immigrant turns. There are a number of significant events that favoured pro-immigrant policies, often involving immigrants as victims. For instance, there was the killing of an African worker in Southern Italy in 1989, which offered Vice-President Martelli the opportunity to present and pass a pro-immigrant act in 1990. The 1992 case of a kidnapped and abused Moroccan girl in Belgium paved the way for the extension of local voting rights to non-EU immigrants and easier naturalisation. Likewise, again in 1992, the murder of a Dominican immigrant by a racist gang in Spain facilitated the introduction of the 1993 integration plan, which was eventually passed the following year. Nonetheless, events whereby immigrants are victims do not always favour more liberal immigrant and immigration policies. Paradoxically, they can produce opposite effects. In Spain, for example, riots against Moroccans championed a reframing of

immigration as a social problem and suggested stricter controls of illegal entries (Morén-Alegret & Ruiz-Vieytes 2006). Or, as Bosswick and Borkert write in this volume, in the late 1980s: the number of xenophobic attacks against asylum seekers and foreigners increased (Lederer 1997: 167), suggesting a direct link to the heated public debate on asylum in the country.

Nevertheless, the government argued that the number of asylum seekers should be reduced in order to solve unrest within the German population and to combat this violence, thus legitimising the alleged causes for xenophobic attacks (Bielefeld 1993). Once again, the Dutch thesis works: politics matter more than events, which are subject to arbitrary interpretations. On the other hand, politics are embedded in, and disciplined by, contexts. Restrictive or generous attitudes and proposals can be newly inserted in the public discourse only when their timing is right – when they can be well received by a good share of the electorate and political milieu. Politicians are entrepreneurs who need raw materials for production. Sometimes, the availability of a given material suggests the kind of production that should take place. Readily available and spreading, anti-immigrant attitudes provide the raw material for political entrepreneurs. In terms of context, we meet a crucial democratic actor – the electorate – and we have to take its opinions into consideration. Parties can fuel, legitimate and reinforce anti-immigrant public opinion (Taguieff 1988). They cannot simply create new opinions in a vacuum; they need contexts and events. And even if, under favourable circumstances, new framing and new measures are accepted, they are not safe from severe opposition by vocal minorities. New frames and xenophobic attitudes can even impel the formation of pro-immigrant advocacy coalitions, as seen in Austrian politician Jörg Haider's 1992 anti-immigrant plebiscite known as 'Austria First'.

Routine alternations of majorities in power can also bring about changes doomed to meet much public resistance. This was the case with the 1986 and 1993 waves of conservative Pasqua reforms. The first reform revised the nationality law, demanding that children of immigrants born in the country apply for naturalisation when they come of age instead of getting it automatically. This seemed to undermine the fundamental principle of *jus soli*. The reform was opposed by a wide, hostile mobilisation of pro-immigrant movements. Once back in power, the centre-left and its Minister of Interior Chevènement re-established the automatic acquisition of nationality. Once the centre-right was in power again, with Sarkozy first as Minister of Interior and later as Prime Minister, it succeeded in passing restrictive measures concerning marriages of convenience and automatic regularisation.

The case of Sarkozy suggests that we focus on another underestimated factor: the role of individuals, irrespective of their party affiliation. Individuals clearly matter when they establish new parties, anti-immigrant

parties, in particular. But they can also make a difference within the same party and majority coalitions. Consider, for instance, the transition from Straw's human rights-oriented approach to Blunkett's focus more on community cohesion and conflict resolution. Note the contrast between Minister of Social Affairs Aubry and his party colleague at the time, Minister of Interior Chevènement. See also the role of Italy's centre-left Minister of Interior Napolitano, who backed the introduction of repressive measures such as centres for detention and identification of illegal immigrants in the 1998 reform act. And again in Italy, in 2009, the relevance of individuals was clearly illustrated by centre-right leader Fini. Backing a liberal reform of nationality law and the extension of local voting rights to non-EU immigrants, Fini favoured a bipartisan, pro-immigrant alignment, though his proposals were strongly opposed by the majority of his party coalition and eventually contributed to his expulsion from the party. Persons and parties matter especially if they are not overly conditioned by their partners in government or the opposition. As I will further illustrate in the following sections, Italy's past centre-right majorities (1994-1995; 2001-2005; 2005-2006), conditioned by the presence of a Catholic party and, for a shorter period (2002-2006), also by a Catholic Minister of Interior, were much more moderate than the fourth Berlusconi governmental majority coalition that excluded the Catholic party and whose Minister of Interior was from the Northern League. The People's Party in Spain, which was in power with only a small majority from 1996 to 1999, half-heartedly introduced a reform in 1999 to extend social rights to illegal immigrants as well. After the 2000 elections, when it could count on a larger and absolute majority, the People's Party reformed the previous act, excluding those rights from it. Lurking behind the 'reforms of the reforms' of the nationality law in France and the immigration law in Spain appears another piece of the puzzle – another reason for change that the next section will now address.

3.2 *Negative feedback and policy 'failure'*

For our purposes, negative feedback means the real or perceived failure of preceding measures aimed at managing migration and integration. Due to the objective difficulty of any policy to solve the problems related to immigration and immigrant presence,¹⁹ we sometimes observe a sort of inevitable series of real or presumed policy failures. These, in turn, provoke a series of reforms of the reforms. When switches in government majorities occur, blaming the previous cabinets for policy failures is a mechanism that helps catalyse new measures or turns. Reforms are then quickly followed by reforms of the reforms, even by the same majority in government. The UK's 2003 decision not to put a moratorium on inflows from the ten new EU member states was quickly revised in 2006, when inflows of potential

Romanian and Bulgarian immigrants were limited and all new communists were excluded from immediate access to welfare facilities. Policies do indeed often follow a zigzagging path.

We have discussed the relevance of institutional and political legacies in shaping immigrant and immigration policymaking, but we have also observed that legacies are not engraved in stone; they can lose significance and eventually be put aside. Party systems and styles of governance, forms of the state, models of welfare and conceptions of citizenship can all be reformed. They bring specific changes into the very structure of immigration and immigrant policymaking. All changes discussed so far take place within national systems and in the frame of stable democratic regimes. Yet, dramatic effects on migration policies may also originate from territorial transformations of states, the birth of new independent states and the rise or re-establishment of democratic regimes.

3.3 *Changing regimes*

The repression of movements for democracy and independence, the rise, fall and re-establishment of democratic regimes and displacement of persons after a defeat all have a significant impact on migration flows and consequently on migration policies. Austria was affected by refugees from Hungary in 1956, from Czechoslovakia in 1968 after the Soviet repression of the revolts and by the introduction of martial law in Poland in 1981. Democratisation and disruption of former Yugoslavia was another source of significant flows, not only to Austria. The first immigration waves to Italy in the 1970s were predominantly asylum seekers originating from South America and Greece after military coups. In the same vein, the economic and political destabilisation of Albania caused masses of desperate people to flee the country for Italian shores. After the 1995 Algerian crisis, France decided to widen the legal concept of asylum seeker to include not only persons threatened by their state, but also by extremist groups, as Withol de Wenden in this volume reminds us. The disastrous military engagements in Vietnam and El Salvador compelled a source of immigrant inflows into the US from these countries (Portes & Rumbaut 1996).

The fall of Communist regimes transformed countries with closed borders into countries of significant labour emigration and transit migration. Their new democratic condition implied the 'inconvenient' status of safe third country. When the inflow of asylum seekers to Western Europe increased in the 1990s, these safe third countries were obliged to take back the refugees who had crossed their territories to reach other European states and were then sent back to their countries of origin.²⁰ Initial policy supporting the favourable treatment of returning national emigrants was discontinued at that time, as Kicing and Korys illustrate in this volume.

The revision of favourable policies towards communities of national origins abroad reveals another factor of change: economic costs and benefits, as well as the perceptions thereof. This factor is propelling utility-oriented policy changes currently being effected in many EU member states and at the EU level. As a result, converging trends in Europe are emerging. The utility-oriented approach, however, was not always strong enough to counterbalance the identity-oriented one that entails co-ethnic preferential policies, at least in Southern European countries thus far.

3.4 *Changing borders*

Border changes after World War II caused significant reallocation and displacement of people in countries like Austria, Germany and Hungary. After the fall of the Third Reich, German nationals were legally assigned to different states, sometimes being removed from the territories where they used to live, e.g. Czechoslovakia and Poland. On the one hand, there was a huge 'spontaneous' inflow of Germans into their former motherlands, Austria and the Federal Republic of Germany. They came to live within the Western sphere of influence that rapidly recovered from economic destruction. On the other hand, part of the German population remained within the new borders of East Germany, under dramatically different democratic and economic conditions. In cases of 'repatriation' to Austria and West Germany, the immigrants of German origin received special legal treatment as far as access to nationality and social security were concerned. After the fall of the Communist regimes and the reunification of Germany, the perception of ethnic German immigrants as a burden to social security rose. Moreover, a sense of generosity towards them decreased: stricter requirements to obtain the legal status of *Aussiedler* were introduced, annual inflow thresholds were imposed and access to welfare provisions was reduced. The same reluctance to deliver rights and provisions to ethnic Hungarians emigrating from Romania to Hungary could be observed after the fall of the Communist regimes. However, the right's victory in the 2010 election caused a resurgence of nationalism and proposals to give back nationality to aliens of Hungarian origin abroad.

Disruption of the Soviet Empire also cleared the way for the re-establishment of independent states. The break-up of an old state and the consequent birth of new ones made internal migration for some an international movement; meanwhile, it transformed others into immigrants without their ever leaving home. The case of Slovaks moving into the Czech Republic (Čaněk & Čížinský this volume) is an example of the former. It reminds us of the much earlier independence Ireland gained from the UK that changed the status of the Irish in Britain. In both cases, these 'half foreigners' enjoyed special legal treatments, and continue to do so. As already mentioned, examples of the latter (sometimes called *migration sur place*) are

found in former Soviet member states that became independent. When Russian settlers in countries such as Estonia and Latvia saw their status as citizens become dependent on linguistic requirements, they, too, were essentially transformed into foreigners.

4 Co-pilots navigating between continuity and change

I hazardously define co-pilots as those actors and factors that influence or cooperate in making decisions without being the main engine themselves; they do not necessarily favour change. They may favour continuity and mollify drastic change, on the one hand, or act as starters and accelerators of change, on the other. As in the previous categories, they can be found in the institutional or social contexts and at national or international levels.

4.1 *Federal and regional systems*

The federal form of the state may have significant consequences for policy-making. Decisions made at the federal level can be blocked by a veto or minimum quorum by autonomous regions, while the same authorities at lower levels can promote policy changes that will possibly be adopted at the federal level. Federal solutions always imply high levels of delegation of responsibilities to regional authorities and consequent territorial differentiation within the same political system. Sub-national delegation can even involve matters such as immigration rules or nationality laws, which are usually the responsibility of the federal government. Differentiation does not necessarily moderate changes at a local level, and it implies the possibility of either contrasting or reinforcing federal decisions. In Spain, the classic division of labour between the federal state, which is responsible for immigration policies, and the regions, which handle immigrant policies, was partially eroded by revision of the statute by autonomous communities, such as Catalonia and Andalusia (Bruquetas-Callejo et al. this volume). According to article 138 of the Catalonia Act of Autonomy, the region has a say in planning immigrant inflow because it is responsible for integration services. And what it is perhaps more interesting is that Spanish regions have vastly differing approaches, as far as the adoption of multiculturalism strategies is concerned (Ruiz Vieitez 2008).

In Switzerland, different cantons and municipalities can decide to ask for a supplementary term of residence before a foreigner can apply for naturalisation (D'Amato this volume). In Germany (Heilbronner 2006) and in Austria (Çinar & Waldrauch 2006), the federal form of the state and the powers of municipalities allow for very different interpretations and implementation of nationality laws, and we consequently witness far different rates of naturalisation.

In Austria, territorial differentiation of citizenship stems from the past. After the creation of the Dual Monarchy in 1867, Austrian nationality was acquired by indirect membership: it was dependent on membership in the *Heimat* and the related *Heimatrecht*. '[T]he belonging to a certain territorial entity such as a town, rural district or other community provided 'the basis for relief and care of the poor' (Brandl 1996: 63). In all these cases, lower governmental agencies can be seen as co-pilots accompanying the centre state legislative process and sometime taking the wheel.

4.2 *Consensual governance and grand coalitions*

The need to accommodate different cultures within one state led to various solutions for reaching consensus, for instance, consociational forms of government that offer both opportunities for, and constraints to, the decision-making process. Take the historical Belgian and Dutch examples of pillarisation, which is a proportional representation of all the main cultural and political segments in government (Sartori 1975; Lijphart 1984), or the so-called 'magic formula' in Switzerland. On the one hand, these solutions permitted approval of unpopular measures since all the main parties could share the burden of public discontent (D'Amato this volume). On the other hand, consensual governments also acted as cushions against brisk turns, since they needed to accommodate different positions. The same remarks apply to so-called grand coalitions, which have occurred in Germany and Austria. Consensual governance also imposes both mediation and consequent moderation of political turns, as well as the possibility of introducing new or unpopular decisions. Unpalatable measures are more likely to be taken when decisions are kept out of the public eye, being confined to parliamentary committees where they stay less heated thanks to the favour-trading that typically goes on in them (Buchanan & Tullock 1962). The limited visibility of the decision-making process makes the search for agreements between the majority and the opposition less embarrassing, not to mention the fact that outcomes are moderated by the need to accommodate different stances.

Decision-making at the level of public administration, along with bipartisan alignments, can facilitate approval of pro-immigrant policies, as they can shelter unpalatable measures from public opinion. Guiraudon (2000, 2008) observes how social rights are less contested than political rights; this has to do with decisions on the former being situated more within the realm of public administration, while decisions on the latter are made in Parliament and exposed to public opinion. According to this thesis, public administration should facilitate the extension of welfare entitlements to immigrants. Nonetheless, this does not necessarily happen, as we see with the 1972 'Fontanet-Marcellin' circular in France, which stopped the automatic legalisation of illegal migrants after a certain period of residence. After all,

the extension of scarce welfare provisions, such as social housing assignment, are decisions usually made by non-elective bodies and they often provoke strong backlashes. Civil servants' attitudes towards innovation or conservation do not depend on the role such individuals play, but on their personal attitudes and their independence from or dependence on politicians. Their being prepared to facilitate or obstruct political lines depends on their level of autonomy, which may be the object of reforms and vary in time, as so happened in the case of Italy illustrated in this volume. The institutional frame and the sheltered positioning of decisions do not necessarily predict their nature, nor their chances for success.

4.3 *Constitutional courts, judiciary power*

Law and courts may play an important role in the policy process at different stages and levels. A number of clear examples from the chapters in this volume show the importance of constitutional courts. In 2004, various decisions of the Austrian Constitutional Court obliged the government to revise the 2003 law that had limited asylum seekers' rights. In Italy, creative interpretations on the part of magistrates and rulings of constitutional court judges were able to dismantle part of the centre-right Bossi-Fini measures of 2002 (Zincone 2006). In 1987, the Spanish Constitutional Court declared some articles of the 1985 act void. In 2007, that court declared that a 2000 law denying immigrants full associational rights was unconstitutional. A 1984 court ruling had set down a number of basic fundamental rights valid for everybody, irrespective of their legal status, and the court did not allow any of them to be curtailed by the 2000 law. In the French case in 1986, the administrative tribunal of Paris cancelled the exclusion of foreign mothers from the third child bonus introduced by Mayor Chirac, a ruling confirmed by the Council of State. In 2000, the French Constitutional Court voided the law, which limited access of handicapped services to EU foreign residents. A 2003 ruling of the European Court of Justice, based on the European Social Charter, obliged the French government to revise the limits imposed on undocumented minors' access to public health. Increasingly, French courts have been supporting alien rights to public education (Heymann-Doat 1994; Guiraudon 2008).

The literature and many of the case studies in this volume affirm the important role of international and national courts (Soysal 1994; Joppke 1999). Courts can moderate or oppose political measures. An important area is that of rights of children and the family. Applying the habeas corpus principle, for example, courts have opposed policy measures that separated children from their parents, or broken up the family in other ways. They have played this role in many individual EU member states as well as at the EU level. Furthermore, by referring to principles embodied in national constitutions and in international tenets, judges cannot only oppose

prejudices to human and civil rights, but can also promote and implement new rights. This happened, for example, when courts enforced the right of married women to keep their original nationality and pass it on to their children. Such rulings that were eventually embodied in statute laws had important consequences, especially in countries with large diasporas and nationality laws that are generous to descendants of expatriates. This is the case of Italy, where the rights of married women to keep their nationality (1975) and pass it on to their children and husbands (1983) were first introduced by constitutional court rulings. In Austria, the right of mothers to pass on their nationality was also established by a ruling in 1985.

Nevertheless, as in the case of other actors and factors, courts and judges do not always act as promoters or defenders of immigrants' rights. They can also oppose or prevent the extension of rights. And as far as promoting or opposing rights is concerned, the courts can change their minds over time. For instance, the German Supreme Court excluded the possibility for married women to keep their nationality in 1953, but upheld its decision in 1999. From the 1990s onwards, the court no longer opposed government policies aimed at reducing asylum inflows and the costs involved (Borkert & Bosswick this volume). Never, though, has it changed its attitude against local voting rights for immigrants.

The possibility for courts to prevent or oppose government decisions depends primarily on how independent the magistracy is from the executive branch. Along the same line, the courts' willingness to intervene depends on their ideological proximity or distance from the ruling majority. In the Italian case, for instance, judges were relatively more compliant with centre-left decisions to limit illegal immigrants' personal liberty than with the centre-right's repressive measures.

4.4 *Welfare state regimes*

The configuration and the strength of welfare regimes can be listed among factors impacting the treatment of immigrants and related policies, though they do not obstruct change or immigrants' rights – neither do they favour them. The classic Esping-Andersen (1990) typology distinguishes three types of welfare regimes: the universalistic (strong and egalitarian), the corporatist (strong but tailored to different categories of workers) and the residual (weak and supporting only the very poor). In theory, the universalistic type should be more able to incorporate immigrants, but these kinds of regimes are embedded in public cultures that are based on a high level of national identity, a sense of belonging to the community and sharing the same public values, including mutual trust. In such a cultural and political context, immigrants can be more easily perceived as 'strangers' and unwanted free-riders. Thus, paradoxically, universalistic welfare systems may reinforce anti-immigrant backlash. This is the case in Denmark, where

welfare transfers are high, funded by taxes and once having been open to every permanent resident (Jensen 2007). In the same country, welfare can be considered an obstacle to integration due to its 'historical staples of homogeneity and equality', as Hedetoft (2006) has remarked (see also Jensen 2007: 10).

In corporatist-type welfare states, where access to welfare depends on having work, immigrants' rights and access to social security may be limited to those who are able to obtain and keep a job. The system is, in principle, open to immigrant workers but, in practice, the higher discontinuity of immigrant employment can be damaging to them, as is illustrated in the Austrian case (Kraler this volume). In countries of the residual welfare state type, the perception of high public budget costs due to immigrants' disproportionate use of relief can lead to the exclusion of non-citizens from such programmes, as occurred in the 1996 welfare reform in the US. Any kind of welfare presents potential severity for immigrants. Therefore, although differences in welfare systems could theoretically be listed among relevant co-pilots, analysis would tend to indicate that the impacts of different models appear more similar than expected.

4.5 *State and civil society*

How and to what extent are civil society partners, particularly religious and workers' organisations, involved in the decision-making process concerning immigrants' integration? And how and to what extent is the implementation of such policies delegated to them? As it emerges in this volume, countries like Germany, Italy, Spain and the Netherlands initially saw measures promoted and managed at a local level. NGOs, for the most part being religiously affiliated, workers' unions, teachers and social workers played a key role. Generally speaking, civil society organisations are important actors in policymaking and policy implementation. They do not only act in accordance with laws, but also in opposition to them. We find the latter case in Italy, where such civil society actors promoted and initiated illegal practices in the past, for instance, allowing undocumented immigrants access to public education and public health – practices that increasingly became formalised. In this way, benevolent illegal practices were increasingly embodied in formalised public decisions that were first expressed in local circulars, then in national circulars, then in decrees and eventually in laws (Zincone & Di Gregorio 2002; Zincone 2006b). Interestingly, this informal lobby and its activity are widely financed by formal public decision-makers. This does not only happen in Italy, but also in other countries, as is illustrated by the German Wohlfahrtsverbände, i.e. advocacy coalition.²¹ Here we see immigrant advocacy coalitions receive funding from the very same public authorities whose decisions they influence and whom they may resist or even disobey (Borkert & Bosswick this

volume). The paradox can be explained by the fact that the coalitions comprise prestigious, powerful organisations which politics cannot ignore or displease. These organisations can both cushion anti-immigrant changes and promote innovations favourable to immigrants.²²

Although most of these organisations have a religious affiliation, lobbyist action can in fact also originate from lay associations, such as parent-and-teacher associations like the *Reseau Education sans Frontières* in France. In August 2006, they were able to keep 30,000 families of minor students excluded from the expulsion plan. Doctors and teachers in the Netherlands who successfully resisted the 1998 Linkage Law aimed at excluding illegal immigrants from public health care and education (Bruquetas-Callejo et al. this volume) are another example. In Germany, doctors in some hospitals promoted the introduction of a special fund to provide health services to undocumented immigrants. Nonetheless, components of the advocacy coalition can change direction and become less prepared to accept or defend illegal migration, as is in fact happening in some EU countries. On the other hand, the advocacy coalition's power depends on just how open a window of political opportunity is within the local and central governments. Unlike the previous three centre-right Berlusconi governments (1994-1996; 2001-2005; 2005-2006), the fourth Berlusconi government no longer included the small Catholic party (UDC). Other relevant pro-immigrant Catholic politicians, including former Minister of Interior Giuseppe Pisanu, were marginalised. Even if some restrictive proposals were stopped in Parliament by dissenting MPs, the window of opportunity for advocacy coalitions under the fourth Berlusconi government was half-closed, and an anti-immigrant-rights sentiment became very explicit from some government members.

Third-sector organisations are relevant actors in those welfare systems in which churches have been able to resist the penetration of the state and where the level of 'stateness' remained relatively low, such as in the Netherlands and Southern European countries (Flora & Heidenheimer 1981). In these systems, the state is accustomed to accepting a certain degree of political dissent from the civil society organisations to which it delegates part of welfare functions. By contrast, systems that traditionally have more control over the delegation of responsibilities and state subcontractors tend to move welfare tasks from NGOs who are perceived as disloyal to more reliable private organisations. This can be seen in the management of temporary detention centres for illegal immigrants in Austria (Kraler this volume).

Trade unions are intermittent partners of pro-immigrant coalitions and are characterised by contrasting roles. They typically discourage immigration to protect national labour, on the one hand, but they defend immigrants' rights in order to prevent downward competition, on the other. In general, trade unions in former emigration countries take more favourable

stances from the beginning, as shown in the Spanish and Italian chapters in this volume. In countries not perceiving themselves as immigration countries, as was the case with Austria and Germany, trade unions emerged from a prevailing anti-immigration attitude. They eventually evolved to take more favourable stances, when they understood that immigrant labour was there to stay and that immigrants could be – and were increasingly becoming – unionised. The ambivalence still persists. As Cerna and Wietholtz in this volume observe:

On the other hand, employers' associations, trade unions and NGOs are more directly engaged in the migration discussion through the dissemination of press releases, reports, campaigns and formal mechanisms, e.g. having input on parliamentary committees (Ensor & Shah 2005). The government has also started to engage in close consultations with the Confederation of British Industries (CBI) and the Trade Union Congress (TUC) to optimise migration policy concerning economic needs. Overall, unions and employers have displayed a comparatively open policy position for labour migration.

All things considered, NGOs and professionals' associations can align themselves with unions and employers' associations over needs to resolve labour shortages with immigrant workers, at least until a tough economic crisis forces them to take the side of national workers again.

NGOs of religious affiliation and employers can even find some opportunities in centre-right majorities, due to the presence of religious and pro-entrepreneur parties. In countries like Italy, where union and NGO members still predominantly belong to the ethnic majority, these organisations serve as the 'indirect representation' of immigrants' interests (Zincone 2000). Local voting rights of immigrants and the organisational strength of immigrant groups can reinforce common ground and cooperation: if immigrant organisations are capable of mobilising votes for specific parties and candidates, they can bargain their support for organisational resources, their members and the immigrant community overall. Consequently, they can also attract new members and become even more influential (Morén-Alegret & Ruiz-Vieytes 2006). This applies all the more in countries that host large communities of immigrants, especially in constituencies where their vote is pivotal, as is the case with France. In the same vein, in countries like Britain and Germany, where immigrant associations themselves – or the immigrant presence in unions – are strong enough, they can attain 'direct representation'. This may enhance their rights, at least until an economic depression overwhelms them with enough pressure from national workers demanding priority access to jobs and social security. In normal times, strong actions to protect or promote immigrants' rights are not only staged by anti-racist movements, but may also come from more

multipurpose movements such as the anti-globalisation movement. Della Porta (2007) found that more than 50 per cent of anti-globalisation groups consider defending immigrant rights one of their priorities. The aforementioned actors' pro-immigrant attitudes may change when national workers are faced with high levels of unemployment due to economic crises.

4.6 *Media, experts and civil servants*

Media are often cited as potential co-pilots, as powerful actors and opinion-makers capable of influencing policies. They serve as a selective sounding board for politicians, experts and, of course, established journalists. Journalists act both as reporters and opinion-makers, screening and interpreting events. Journalism as a profession and journalists as individuals can be more or less independent from political and economic power, more or less respected by the political milieu and more or less willing and able to network with other relevant actors. Societal coalitions that include media may be powerful. In 2001, the Czech government was forced to amend the Foreigners Act because of criticism coming from the joint action of NGOs, the government's human rights commissioner and the media (Čaněk & Čížinský this volume). The political attitudes and policy directions suggested by such actors can change over time, irrespective of their level of independence and prestige and their capacity to form powerful alignments and networks. They can alternatively influence continuity or change, but their impact on policies convergence is unpredictable and sometimes irrelevant.

Experts and civil servants, as well, are neither judgement-free nor indifferent to their careers. It would be naive to consider them neutral or disinterested agents. They can both undermine changes and promote new policies – the direction of their influence can go conservative or innovative, pro-immigrant or anti-immigrant (Feldblum 1999). When their proposals are based on cross-national comparative studies and experience, as either individuals or research centres, they can convey a convergence of policies, provided the politicians they assist in making decisions intend to act in tune with the international mainstream, and that the comparison is carried out competently and objectively. Alternatively, they can produce continuing divergence when their comparisons suggest that not sticking to the country's policy legacy would dilute national values without bringing positive results.²³ Transnational think tanks usually adopt comparison as a means of suggesting that policy lines be shared by different countries, an attitude that aims at producing convergence (Ruzza 2007). Civil servants and experts can favour continuity or just soften drastic changes, on one hand, and promote innovation on the other – at least in theory. The role of experts and civil servants varies according to the political cycle and to politicians' previous curricula and careers. Empirical research shows that

newly appointed ministers and chairmen, especially, tend to rely more on experts and top-level civil servants, as is illustrated by the cases of the Netherlands, Italy and Austria (Penninx et al. 2004; Widgren & Hammar 2004; Zincone & Di Gregorio 2002; Zincone 2006). This category's influence depends on the prestige the actors enjoy both as a professional group and individually.

Intellectuals, experts and civil servants enjoy different degrees of prestige across countries and political cultures. A meeting of the minds between co-pilots and real pilots (the politicians) is crucial when it comes to the recruitment of such co-pilots and the basis for their influence. This is true for experts, in particular, since they are chosen on the premise of sharing values and aims with the political decision-makers who seek their advice. This, though, may create a catch-22: the closer experts are to a policymaker, the more they are likely to be listened to, but at the same time, their capacity to steer decisions in a different direction is less meaningful (Martiniello 2004).

Generally speaking, experts and civil servants often function less as co-pilots and more as political tools. Penninx (2005) characterised recent Dutch policymakers' approach to selecting academic experts as a 'pick-and-choose' strategy of scientific expertise. In such a strategy, experts can be used for different purposes. For example, ad hoc committees can be appointed by large parliamentary agreement in order to remove hot issues from political debate, letting them cool down (Widgren & Hammar 2004). But the influence of experts can also change, depending on the political evolution of immigrant and immigration policies in the country. When the political elite feels more competent and the issue becomes more politicised, research and experts may become perceived as troublesome encumbrances (Entzinger 2008).

5 Cushions against radical change

In this section, I turn to cushions: actors and factors that moderate changes or make it more difficult for them to take place. The effects of these actors and factors may be similar to the ones illustrated in the preceding section, but the mechanism through which they work is quite different. Cushions, too, are positioned at a different decision-making level.

5.1 *Direct democracy*

Cushions can act at the institutional level, as in the case of the Swiss political system. There, the referendum serves as a decision-making device by creating high exposure of federal government reform projects to the veto of the majority of voters. In Switzerland, referendums can even overrule

the Supreme Court and possibly reform the Constitution, thereby undermining the main tools that protect religious and ethnic minorities of immigrant origins against discrimination, as D'Amato illustrates in this volume. Direct democracy has actually played a crucial role in deciding against immigrants' rights.²⁴ This was the case of the September 2004 referendum that rejected the government proposal to make access to nationality easier for settled foreigners and minors born in the country, and in the case of the successful November 2009 referendum against constructing new mosques. As any social science rule, this one also allows exceptions: the February 2009 referendum to reject the adhesion to Schengen did not pass. But in Switzerland, it is also the federal system – which foresees a quorum, a minimum number of regions to pass a law and a qualified minority of regions entitled to veto – that can potentially limit the rights of foreign-born minorities. This part of the resident population is not allowed to vote in either national referendums or cantonal elections.

5.2 *Ineffective party systems*

Governance capabilities largely depend on a party system's format (i.e. the number and size of parties) and its mechanics (i.e. the way it operates according to relations among its parties).²⁵ Highly fragmented and polarised systems often get stuck; it is difficult for them to form large enough, coherent coalitions (Sartori 1975). Party systems challenged to produce consistent majorities are forced to limit the scope and the innovation of their policies, especially in conflicts. They consequently generate only moderate changes.

Scant majorities that have to come to terms with the opposition must refrain from clear-cut reforms, delivering instead balanced, seemingly patchwork legislation and policy. This is illustrated by Prodi's Italian centre-left governments and the last Social Democratic government in Germany (see Zincone and Borkert & Bosswick this volume).

Even when the majority in government is large enough, if it is also highly conflictual and hosts antithetical positions in matters of immigration and immigrants' rights, dramatic reform cannot be adopted, and things are likely to stay the way they are. This syndrome is illustrated by the 2002 Bossi-Fini reform under the second and third Berlusconi governments (2001-2006): the Northern League's xenophobic attitudes and the National Alliance's traditionally rightist push for stronger repression of illegal immigration stood in stark contrast to the immigrant-friendly attitudes of the Catholic component. The same happened during the Dutch Purple Coalition: although the majority of parties involved favoured a shift towards more state neutrality in religious and cultural matters, a minority that favoured maintaining support for religious organisations and respecting their autonomy was temporarily able to restrain the policy turn (Sunier 2007).

5.3 *The electorate and lobbies in the political cycle*

The electorate and lobbies seem to have different impacts according to the various phases of the electoral cycle. Irrespective of their strength and political creed, elected decision-makers tend to conform to a behavioural pattern that reproduces a sort of political cycle (Howlett & Ramesh 1995). The cycle takes shape as follows. At the beginning, newly appointed members to national or local governments tend to honour their electoral bill of exchange and stick to their electoral manifestos that tend to please public opinions' moods. Later on, they must respond to powerful lobbies. But immediately before new elections, parties in power must respond again to public opinion, even if the opinions conflict with their own values, since they do not want to lose to the competition. As some country cases presented in this volume illustrate, powerful lobbies are not necessarily anti-immigrant. More often, they act as pro-immigrant advocacy coalitions. By contrast, public opinion can sometimes be more anti-immigrant, especially in recent years.

In reality, the political cycle syndrome occurs only on the condition that all other factors remain the same. If public opinion towards immigration, labour needs, pressure from lobbies, the volume and nature of inflows or other relevant elements of the political context alter, parties in power have to change their line, thus breaking the cycle. Observing the recent period of French policies, De Wenden in this volume reaches the conclusion that their making was led by public opinion. I am not sure this remark can be applied to the whole history of French policies, but it is certainly relevant for some periods. Yet, this does not hold only for France. What we observe in a comparative perspective is a contrasting action between electorate attitudes and pro-immigrant lobbies. This give and take can generate 'balanced policies' – that is, moderate innovation.

5.4 *Balancing policy inputs*

Generally speaking, environmental pressures often act in divergent directions. This suggests that policymakers must adopt what the authors of the British chapter in this volume have defined as 'balanced' policies, which are the opposite of radical changes.

Balanced policies are the outcome of a twist effect. Patchwork reforms and policies can result from, on the one hand, the demands of an increasingly frightened public, the surge of a cultural divide and ethnic turmoil, deterioration of public order, terrorism, the rise of competitive anti-immigrant parties or the role of xenophobic factions within the political majority and, on the other hand, objective needs for skilled and unskilled workers, compliance with principles and rights embodied in international conventions or national constitutions, the presence of pro-immigrant parties in the

majority, vocal pro-immigrant movements and influential advocacy coalitions. A case in point is the 1993 British law, which made it possible for asylum seekers to appeal the rejection of their application while staying in the country though excluded overstayers and students from entitlement to temporary permits (Cerna & Wietholtz this volume). Another example Withol de Wenden provides in this volume is Autain's 1981 law in France, which tried to appease NGOs and leftist movements by legalising some 150,000 irregular immigrants while also reassuring a public that was hostile to illegal immigrants by punishing their employers more severely. In the same vein, the 1998 Italian centre-left law established not only a set of social rights, but also introduced detention centres for illegal immigrants. The 2002 Italian centre-right act, in its turn, reinforced repressing measures and the link between employment and residence permit, on the one hand, but kept all social rights that were granted by the former centre-left government, including access to public health and compulsory free education for illegal immigrants, on the other. On top of that, the centre-right government voted for the largest regularisation provision in Italian history and, at that time, it was the largest ever adopted in Europe.

The regularity and frequency of the mechanisms that cushion radical change raises the question as to whether scholars are not too often tempted to single out dramatic turns in the policies they analyse. In fact, switches do take place because factors and actors change. But are they as frequent, one-way and dramatic as we often describe them? Are we sure that they are not overrated? For example, a significant group of colleagues has decreed the death of some national models, particularly multicultural models. Let me suggest a more moderate thesis. Models were not as homogeneous and orthodox as they were depicted. As Withol de Wenden reminds us, in assimilationist France: '[f]rom 1974 onwards, "language and culture of origin" were thus taught in schools to children of foreigners'. Models described as multicultural, such as the British, the Dutch and the Danish ones, were all hiding a creed of the superiority of the national culture, the pretence of either a spontaneous future assimilation or the hope that by keeping their own language and customs, immigrants and their descendants would more easily be tempted, if not convinced, to go back home. In fact, the same political systems have adopted different models in different periods (Vasta 2007a; Brubacker 2001; Guiraudon 2008). And we must add that sometimes public rhetoric and theoretical models, on the one hand, and real policies, on the other hand, may take separate paths and/or move at different speeds. However, it has been observed (Hall 1993) that empirical developments in context do not necessarily produce immediate changes in policy paradigms. For instance, Geddes (2003) noticed that divergences among European immigrant policies persisted during the 1970 and 1980s, while similar challenges had to be faced by the European states. Policies

and policy frames are characterised by a considerable degree of stickiness for each set of factors illustrated up until now.

Having said this, we do not want to overrate persistence and continuity, either. Policies can embody relevant changes as well, straight changes did and do take place and, as I have emphasised, actors and factors are also responsible for changes in assigning pilots. Moreover, though divergences are doomed to persist, relevant convergences do occur and are occurring. In the next section, I will illustrate some common factors and actors provoking shared changes and convergence between EU countries' policies, many of which are embodied in EU provisions and documents.

6 Converging trends and contradictory developments

Having focused in the preceding sections on actors and factors that promote or hinder policy changes within single political systems, I will now change gears to ask which macro-developments – common to, and influential, on all the observed systems – may produce convergence of policies, now or in the near future. I will also illustrate how these common developments simultaneously embody relevant contradictions.

6.1 *The pattern of migration policies*

A first factor explaining current policy convergences across the EU political systems originates from the fact that country systems have followed a similar pattern, one that emerges from many of the cases analysed.²⁶ I do not intend to dust off the old theory of migratory cycles, nor do I propose a deterministic vision of the evolution of migration policies. I would just like to highlight a recurrent evolution of policy. For the sake of simplicity, let me call that a 'pattern'.

The pattern I am going to describe is not synchronic. The cases observed in this volume entered into the pattern at different points in time and with specific characteristics, and they proceed at unique speeds. This discrepancy in timing is one factor explaining differing immigration and immigrant policy models of the past, whereas increased synchronisation can be listed among reasons for, at least in relative terms, the original models coming to crisis and the present convergence. We can distinguish two facets to the pattern. The first concerns an evolution of the countries' international relations, notably joining the EU; the other concerns the presence of immigrants and religious groups of immigrant origins, their perceived degree of social, economic and cultural integration – or non-integration – and their interactions with the autochthonous community over time.

6.1.1 *EU-prompted patterns*

Current member states joined the EU at different points in time, and at their point of entry, they were not tied by the same commitments on immigration and immigrant policies. The UK, together with Ireland and Denmark, joined the EU on 1 January 1971. When common immigration and integration policies started to emerge in the 1990s, the British government added a protocol to the Amsterdam Treaty that allowed it to opt out of decisions made by the majority in matters of asylum and immigration.²⁷ In practice, however, the UK used this option only in a limited number of cases, and was particularly active and influential in the making of the asylum directive, a hot issue in the country.

Together with Portugal, Spain joined the EU in 1986 with more conviction than the UK. It was consequently more prepared to undertake a rapid process of adjustment to communitarian laws and standards, and to adhere promptly to the Dublin and Schengen Treaties. As the authors of the Spanish chapter in this volume observe, even though there were few immigrants in the country then, it was

in 1985, that the first Foreigners Law²⁸ was passed in the central parliament. The way these events unfolded indicates that Spain's full incorporation into the European Communities in 1986 played a more important role for introducing the law than any immigration statistics.

Needing to comply with EU requirements appears to be a fundamental factor in explaining Polish and Czech policies during the preparation period in which they were under scrutiny. For instance, they had to comply with the Schengen Treaty as far as the control of the borders was concerned. More generally, as Čaněk and Čížinský write in this volume: 'The need to harmonise legislation before and after the Czech Republic's entry into the EU produced a considerable amount of work for the high-level Czech administration dealing with migration policies' (Baršová & Barša 2005). Although migration policy in the 2000s is described as more conceptual and active, it is still regarded by experts as being, to some extent, 'mainly EU-driven'. Immigration policies have remained a matter of mostly high-level bureaucrats (Drbohlav 2007; Baršová 2005). Even though prospective and actual entry into the European Community was the main international factor, the opportunity to act in concordance with international organisations such as the Council of Europe, UNHCR, IOM, the Budapest Process (located at ICMPD) and the ILO influenced the first phases of migration policies in the re-established Czech Democracy.

Poland also had to conform to Schengen standards, accept the status of safe third country and comply with EU legislation in general. EU policy constraints and transfer of experience from some of the older member

states played a crucial role in developing policies, as Kicingier and Koryś in this volume observe. The main consequence of their reacquired political liberty and orientation towards the West implied a cultural and legal re-framing of emigration, condemned under the earlier Communist regime and then accepted as a factor of economic growth. And although immigration was not yet a real political domestic issue, Poland had to get equipped with dedicated public bodies to manage it: in order to appoint its proper representative at EU decision-making meetings, Poland had to mirror the decision-making structure of other EU member states.

6.1.2 *Internally conditioned patterns*

We start noticing that the pattern does not concern only actors and factors of migration policies, but also the administrative and governmental organisation of policymaking. In other words, it is not just the policy ‘software’, but also the policy ‘hardware’ – the structure of the state that counts. This observation also applies to another facet of the pattern: the domestic.

In the beginning, when immigration is still unnoticed, immigrants are conflated with other foreigners. As stated in the Czech chapter, the migration regime set up by the 1992 Foreigners Act ‘was based on the assumption that it was not necessary to regulate issues related to foreigners in a way that would dramatically differ from the general norms of administrative law’ (Uhl 2005). In this phase, responsibilities mostly fall under the Ministry of Foreign Affairs, though they can be shared by the Ministry of Interior if aliens are perceived as a potential treat to the public order.

When the first significant waves of immigrants enter the country, they are usually seen as labour migrants, and treated as such. Consequently, policies pertain to the regulation of entry, residence and work permits. An important rationale behind these regulations is the protection of the national labour force against what is supposed to be a potential source of competition. Under pressure of the trade unions, initial immigration policies in the UK were motivated by the desire to protect the national labour force, as Cerna and Wietholtz note in this volume.

[...]1961 saw a particularly massive increase in immigration numbers. A political campaign against non-white immigration consequently emerged first within the public, then among opposition members in Parliament and finally in the Ministry of Labour (Hansen 2001). The campaign was ultimately able to stop the open policy in 1962 with the first Commonwealth Immigrants Act [...] The act ruled that Commonwealth immigrants could enter the UK only via a voucher scheme unless they were born in the UK, held a British passport or were included on such a passport.

In France, Germany, the Netherlands and other European countries, it was the 1973 oil crisis, in particular, that led to policies protecting domestic manpower and encouraging foreign workers to repatriate, often with the blessing of trade unions. Pressured by high rates of unemployment, relatively recent immigration countries such as Italy and Spain also adopted protective measures to deal with the first significant inflows.

Later on, the same trade unions that may have previously opposed immigration became promoters of equal rights for immigrant workers. They did this for two reasons: first, unions wanted to avoid downward competition by letting immigrant labour forces go unprotected and consequently become less costly and more flexible than national labour; second, immigrant workers were increasingly becoming members of unions, some of them also being active militants. The preference clauses in favour of national and EU workers, which were initially introduced in many European countries to protect autochthonous workers, were either removed or simply not implemented. An additional reason for this choice was that proving the unavailability of preferred national and EU workers before new immigrants could be hired turned out to be both cumbersome and ineffective. Recently, however, new protective measures were again adopted. This happened when national working-class and long-term resident immigrants began to perceive newcomers as competitors on a tough labour market. 'Shifting the "*locus*" of control from the factory gate to the national border' (Gächter 2000) becomes a major objective of trade unions, as reported by the authors of the Austrian chapter in this volume.

In the second phase of the labour migrant pattern, we observe organisation of their recruitment. In order to manage workers' migration, bilateral agreements with the sending country are signed and some temporary accommodation is provided. With their possible repatriation in mind, new immigrant groups are allowed to retain their native language and customs. The Ministries of Foreign Affairs and of Interior are still relevant, but significant responsibilities are assigned to the Ministry of Labour and, in the case of institutionalised neo-corporatism, social partners also play a role.

In the third phase, immigrants tend to settle, even if not particularly welcome, and become a steady part of the population. When nations eventually accept that they have become countries of immigration, as in the case of Germany, incorporation and integration policies are introduced. Such policies tend to respond to objective needs of immigrants (Bonomi 2008), and they result in equating rights of long-term residents to those of citizens. EU policy lines conveyed these principles in the 1999 Conclusions of the Tampere Council, which proposed to give long-term third-country residents 'comparable rights', embodied later in the long-term residents rights directive of 25 November 2003 (see Halleskov 2005). In this phase, long-term residents acquire a larger share of social rights. In some European countries, they even get local voting rights and/or other

lesser forms of representation. Sometimes, a more generous access to nationality is introduced and knowledge of the local language is favoured.

The non-synchronic character of this 'evolutionary pattern' clearly emerges when we observe the evolution of immigrants' rights that are outside the realm of EU policies, such as political rights (Waldrauch 2003) and access to citizenship (Bauböck et al. 2006, 2007; Aleinikoff & Klusmeyer 2001; Hansen & Weil 2001; Nascimbene 1996). But that character is also observable in relation to long-term residents' rights and family reunion rights, which are now, in principle, regulated by communitarian directives though do not necessarily become uniform (Groenendijk 2006).

In this third phase, the sectors of education, welfare and social affairs are involved in policymaking, but a leading role in coordinating what has become an intricate web of complex public interventions is usually assigned to the Ministry of Interior. Previous and new responsibilities are assigned to this ministry, not least because it is responsible for the bulk of nationality procedures in many legal systems. Ad hoc bodies, such as integration committees or even ministries of immigration, can be created. EU directives, being the results of long decisional processes, may eventually be approved only to find that the European political climate has, in the meantime, changed. As such, EU directives can be used to restrict immigrant rights even though they were conceived with different aims. For instance, Directive 2003/109EC on long-term resident third-country nationals was used to introduce the language and integration requirements and to raise the time of residence to deliver permanent stay permits in, for instance, France, the Netherlands and Italy (Bauböck, et al. 2006a: 29).

When racial riots, value clashes, petty and high-profile crime, a real or perceived welfare burden and/or acts of transnational terrorism start surrounding immigrant communities, immigration and the presence of immigrants start being seen as problems to be solved. Public policy's main aims become fighting crime, combating illegal entry and trafficking, avoiding unemployment and free-riding by immigrants and dealing with cultural divides. In the wake of new national priorities such as these, EU policies also become more oriented towards combating illegal entry, smuggling and trafficking of immigrants, criminality and terrorism. The Conclusions of the Presidency of the European Council in Seville (21-22 June 2002) can be considered an important step in that direction: among other things, they established the principle of including cooperation agreements in readmission programmes. Frontex, the European agency responsible for controlling external borders, was created in October 2004, and the new External Borders Fund 2007-2013 was richly endowed. The European Pact on Immigration and Asylum approved in October 2008 embodied this attitude as well.²⁹ In this phase, the core responsibilities remain in the hands of the Ministry of Interior, though the Ministry of Foreign Affairs plays a relevant role as well. Often together with the Presidency of the Council, these ministries

are involved in rebuilding and combining immigration policies by reaching bilateral agreements with sending and transit countries. The new goals are enforcing public security, reducing welfare spending and promoting cultural and social cohesion. Vasta (2007a: 10) observes how, since 2000, in Britain, 'a new official strategy of commission on "cohesion" has been introduced' almost annually.

Changes in framing and responsibility shifts have not only taken place in individual countries, but also within the European Commission. Up until 2000, there was only one specific taskforce within the office of the Secretary General; migration responsibilities were distributed among different directorates – including those for employment, social affairs and equal opportunities – though they all played important roles. In 2000, the new Directorate-General for Freedom, Security and Justice was established to absorb the scattered responsibilities. EU policy lines are the result of single member states' positions, their bargaining power and their propensity to exchange favours – they reflect member states' policy changes. That said, such changes at this level are somewhat moderated by the temporal lags between national and EU elections and by the EU's complex decision-making procedures.

The country chapters in this volume, particularly on Austria, the Netherlands and Italy, underscore the relation between changes in the conceptualisation of immigration and integration, on the one hand, and the allocation of responsibilities, on the other. All the same, within that general rule there is complex variation as far as where the responsibilities are allocated. In theory, responsibility in centre-right governments, which are more security-oriented, should be mainly allocated to the Ministry of Interior, whereas a more integration-oriented centre-left government should place more responsibilities in the Ministries of Social Affairs and of Welfare. Authors of the Dutch and Italian chapters in this volume, however, observe how both policy attitudes and the allocation of responsibilities can also vary within governments composed by the same party majorities. In practice, centre-right as well as centre-left governments can house more or less pro-immigrant or anti-immigrant ministers who may, in turn, be granted different levels of responsibility, depending on their influence within the cabinet. Under the second Berlusconi government, for instance, Minister of Interior Pisanu was a moderate, and his handling of immigration policies cannot be read as solely security-oriented.

To conclude, immigration started at different points in time in European countries, which partially explains the diversity across EU member states' policies. Furthermore, not only do the reasons for their start and transitions into following phases vary, but so do policy developments and results. This is the consequence of the receiving countries' different institutional and economic profiles, their different legacies and immigrations' varying configuration and impact. Latecomers such as Poland and the Czech

Republic catch up with their predecessors through the diffusion of policies imported from political systems possibly considered more advanced or more experienced in the field. On the other hand, they have to comply with EU rules once they have joined the EU. But perhaps more importantly, all these countries now have similar problems, albeit in different measure. Common challenges are directly shaping the immigration policies of EU partners and consequently bringing about convergence. Though these common problems may primarily impact leading partners in the EU, they will also have an effect on political systems that are less directly affected at present.

7 Economic and political macro-developments

As the present migratory drama plays out, at work backstage are the same economic and political macro-factors that are driving current transformations of affluent societies. Developed immigrations are converging at present, and they could very well lead to convergence in the future.

7.1 *International economic competition, labour markets and the persistent transnational crisis*

This section will begin by discussing pre-crisis factors, because the economic crisis that began in the late 2000s and still persists at the time of writing did not just introduce new elements, but also aggravated elements – and problems – that were already there. A first important factor was increased economic competition among members of ‘the old club’ and successful new entries from the emerging economies, thus putting pressure on national businesses and workers to boost their productivity. Labour was one of these strategic resources. To face international competition, the old economies required more productive, flexible manpower. This resulted in policies aiming to cut back the costs of labour and increase productivity. A delocalisation of production and importing more flexible, less protected alien manpower were among the tools available to face increasing competition. Furthermore, increasing competition from abroad led to the curbing of other costs, taxes and contributory welfare costs. This meant that in more productive regions, employers and workers, alike, were reluctant to delegate resources to what they redefined as a parasitic part of the national stock. Richer regions requested and sometimes obtained a higher level of control over their fiscal resources, as well as some delegation of economic responsibilities. At the same time, the current economic crisis obliges them to devote important resources to create social shock absorbers and tools for recharging the economy, and to invest parsimoniously. Needing to

prioritise and search for funds, governments tend to save resources or withdraw new taxes and contributions from non-voters – that is, from immigrants.

Furthermore, even before the crisis, increased global competition was causing national workers to fear economic insecurity. This was exacerbated by worries of being displaced by newcomers and losing their jobs to them. Impatience, if not hostility, towards immigrant communities was and is reinforced by the disappearance of a familiar – and symbolic – social landscape, by the fear of cultural dispossession. From a national perspective, a negative portrayal of immigrants takes root: immigrant workers, being a modern labour ‘reserve army’, are more exposed to unemployment and therefore become perceived as a burden to the public budget. Nationals are not prepared to redistribute resources or opportunities to immigrants, whom they are inclined to consider less deserving poor people, if not undeserving altogether. As societies become more fragmented and diversified, the propensity to redistribute decreases, and the boundaries of solidarity are redrawn. Here we see that ‘useless’ aliens are unlikely to be included, especially when a society is faced with greater needs and limited resources. Funds are preferably devoted to incentivising the repatriation of unemployed immigrants; measures of this kind were taken in some EU countries after the 1973 oil crisis and recently have been proposed again.

Neither the backstage factors nor the reactions to their impact achieve the same degree of relevance in all European countries, though they are proving able to lead present policy trends.

7.2 *Demographic necessity versus economic insecurity*

Behind the mechanism outlined above, another common factor is at work: Europe’s specific demographic features and their possible consequences. The problem is widely known by now: birth rates have fallen across Europe and shortages of labour supply are predicted as a result. Between now and 2050, the working population (aged between fifteen and 64) will decrease by 59 million (European Commission 2007).

Of course, the impact of this factor is not homogeneously distributed,³⁰ nor will the effects of the demographic development have the same impact in all EU countries. Also contingent is the development of national economies and labour markets. Before the current crisis, December 2007, for example, unemployment in the EU varied from 2.8 per cent in the Netherlands and 3.1 per cent in Denmark to 7.9 per cent in Germany, 7.7 per cent in Portugal, 7.7 per cent in France and 8.7 per cent in Spain – the EU-16 adjusted average being 7.2 per cent (Eurostat 2009). Even though the unemployment rates were quite different, public opinion in countries with fewer economic problems also perceived a certain degree of economic insecurity. Since unemployment rates are rapidly rising everywhere in

Europe,³¹ the impact of this factor will be much stronger than prior. Jobs once largely rejected by nationals (e.g. housekeeping, care-giving, agricultural labour) are now becoming acceptable. We have already observed a number of conflicts between national and immigrant workers in European agricultural regions, as well as protests by blue-collar workers who are losing their jobs due to the recession, and thus demand receiving priority, even over immigrant workers from old EU member states.

In the field of migration and integration, rising insecurity will play an important role in future policymaking. That insecurity used to be reinforced by rising prices and the loss of purchasing power by employed workers, which was considered one cause of France's rejection of the European Constitution. Though prices at the beginning of a depression decline due to decreased demand, they may rise again, and other serious problems are likely to occur. Insecurity is reinforced by an increased share of temporary jobs,³² which these days are the first to be eliminated. Economic insecurity may become the main 'fright factor' able to influence future policies. In this scenario, all kinds of other factors 'fall into place' so as to generate hostility towards immigration, whether the worries are valid or not. As a result, high rates of immigrant unemployment,³³ the supposed burden on the welfare budget and competition for social security are easily accompanied by complaints about immigrants' poor educational skills, disloyalty, criminality, etc.

7.3 *Public attitudes towards immigration and migrants*

As stated earlier, the population's changing attitudes on immigration and immigrants – and the focus of their fears – provide important 'raw material' for policymaking. So, what is the current situation? And what can we expect? Or, at least, how were things immediately before the transnational economic crisis that began in the late 2000s?

On the positive side, according to comparative opinion polls taken before the crisis, competition for scarce welfare resources did not top autochthonous concerns. By contrast, substitution of national workers with immigrant workers had already been seen as an imminent risk – despite scientific evidence being more inclined³⁴ to dismiss the supply of immigrant workers as having an irrelevant impact on national unemployment.

An important concern linked to immigration, at least in Europe, has long been crime rates among immigrants and their descendants. In some countries, this concern used to score higher than the fear of losing one's job to an immigrant. Again, these attitudes do not necessarily have empirical grounds: rates of foreign criminality and indicators, such as the foreign population in prison, vary considerably from country to country, depending on many factors; some categories of foreigners are more law-abiding than the autochthonous populations; and undocumented immigrants commit far

more crimes than legal immigrants.³⁵ But according to the majority of European national statistics, the percentage of immigrants in prison is higher than their presence as residents, a factor capable of impacting public opinion in a negative way. Together with the stories of clandestine entries stressed by the media, criminality contributes to the image of immigration as being out of control. Furthermore, cultural and religious minorities are seen as challenging core national values, such as gender equality and freedom of opinion.

Such fears are not felt to the same extent in all European countries, and they also vary over time. For instance in Germany, France, and new EU member states (Poland, the Czech Republic and Hungary), the prevailing fear up until recently was losing one's job. Meanwhile in Italy, public order and security were felt to be the most important (Diamanti & Bordignon 2005). Perceptions and the consequent hierarchies of fear that they create are doomed to change under the pressure of looming economic crises and international catastrophes. Nevertheless, in this regard one actor has played the leading role: transnational terrorism. Perpetrated by Muslims and appealing to poorly integrated immigrant communities, this vicious antihero in the migratory drama appears here to stay. The combined fears of unmanaged immigration, failures in immigrant integration and terrorism are often cited as the top three problems to be faced by future generations of Europeans (Eurobarometer 2007). Again, the sum of immigration-linked fears reaches different percentages across countries, but together the problems score a remarkable average of 40 per cent in the EU-27.

I am aware that this outline is too brief to adequately sketch the complex globalisation and de-globalisation syndrome studied in depth in a vast amount of literature. It is also impossible to foresee the evolution and/or the impact of the current crisis. I do, however, wish to briefly recall some of the macro-factors setting the scene. The sketch can help explain the main converging trends that characterise ongoing immigration and integration policies.

7.4 *Focus on utility-selective migration: Is zero immigration back in fashion?*

Although facts, data and opinions related to immigration and its impact are highly variable across the Continent, policies of European countries present common trends that are led by the factors and actors outlined above. The need to reduce public spending while allowing only 'useful' immigration is responsible for a set of shared policy trends, driven by a cost-benefit approach that is currently referred to with bywords such as 'managed migration' or, in French, '*immigration choisie*'. Though it incorporates a mix of elements and timelines, this policy trend is visible in most European countries and EU policy lines. Its basic aim is to maximise the positive impact

of immigration and reduce or soften its negative impact. Such policies try to attract highly skilled immigrant workers while simultaneously discouraging the immigration of those who might burden the public budget, such as reunified family members and asylum seekers. Such policies also adopt more stringent requirements for immigrant acquisition of legal status, and they limit refugees' and reunified family members' access to welfare provisions. They attempt to spread the costs and impact of refugees over the entire country, doing their best to share the burden with EU member states.

This cost-benefit oriented attitude is not new. It was actually the basis of the guest worker policies of the 1960s and 1970s. After the 1973 oil crisis it was strengthened, becoming the driving force behind policy campaigns such as 'zero immigration' and 'Fortress Europe'. Nonetheless, this attitude was abandoned when Europe was faced with objective needs for more manpower, as well as the impossibility of putting a halt on family reunions and asylum seekers. The limited openness that followed can be defined as a 'selective borders' approach. It intended to admit only 'useful' immigrants referred to as skilled workers; the unskilled were admitted only insofar as they were useful in an immediate way, as is the case with seasonal and temporary workers participating in so-called circular migration.

Save for some exceptions,³⁶ doors were only opened to highly skilled immigrants (IT experts, in particular), seasonal or temporary workers and students. This was the case with Germany's reforms in 2000 and 2001. It was also the case with Britain, as Cerna and Wietholtz (2008) remind us:

Over the last decades, the UK has undergone a profound shift from a 'zero-immigration country' to one that adheres to the paradigm of 'managed migration' (Layton-Henry 1994, 2004). Since the 1990s, British immigration policy has been characterised as restrictive towards asylum seekers and illegal migrants but welcoming towards skilled and highly skilled migrants. To this end, UK governments have passed several major pieces of legislation on immigration and asylum, namely, in 1993, 1996, 1999, 2002 and 2004.

Introduced in March 2006, the point system left little space for unskilled immigrants, a labour force to be provided mainly by new EU member states whose access to welfare benefits was restricted. In 2006, French Minister of Interior Sarkozy reopened the borders for the first time since the oil crisis of 1973, but only to skilled and seasonal workers. And in October 2007, a proposal was presented that would establish common procedures and possibly a common entry visa for highly skilled workers by means of an EU directive; it reflected a policy line that by then prevailed among member states.

Though the October 2008 European Pact on Immigration and Asylum explicitly excluded such a prospect, Spain, Britain and Italy announced that they will possibly be returning, at least temporarily, to a sort of zero immigration policy. Due to EU enlargement, however, blocking new immigration flows is even more difficult to implement than it was in the 1970s. In Italy, for instance, Romanians are the largest minority both in terms of foreign residents and inflows, and they cannot be expelled for unemployment. Repatriation programmes, which have already been planned, will prove as ineffective as they were 35 years ago. Unemployed immigrants who cannot find a new job go back to their native country on their own, especially if they have the possibility of moving freely and returning to their receiving country once the economic situation improves. Greater opportunities for mobility make it easier for new EU member state immigrants to go back and forth. They have indeed started to repatriate, but the relatively more rapid and deep crisis of their own countries' economies is likely to discourage return.

The dire economic situation aside, selective immigration cannot be considered a rational choice when national economies also need a stable source of unskilled workers, as then EU Commissioner Frattini noted (Frattini 2005: 21). Sometimes the discrepancy between rhetoric on selective borders and actual economic needs has been bridged by a *de facto* tolerance of the undocumented workers who are widely present, even in officially 'severe' countries, as is demonstrated by mobilisations of undocumented babysitters and caregivers in France.³⁷

Subsequently, clandestine and overstaying immigrants can be either regularised by relatively open, automatic individual procedures, through mass amnesties or by surreptitiously being inserted in 'planned' inflow quotas, as the Spanish and Italian cases show. In Italy, it has been estimated that two out of three legal immigrants (Blangiardo 2005) have gone through a period of illegal residence.³⁸ For much of the last decade, irregular immigration reached over 40 per cent in Spain (González-Enríquez 2009), while 'extraordinary' regularisations have been constant immigration policy tools in Southern Europe (González-Enríquez & Triandafyllidou 2009). Even if legal flows of low-skilled workers are banned, a way in will be found all the same. This was the case in the Czech Republic where, after the restrictive act of 2001, immigrants started to arrive as bogus self-employed workers.

From a legal point of view, illegal immigrants, together with asylum seekers (bogus ones, in particular) top the list of undesired immigrants. They are the unwanted immigrants *par excellence*; collectively labelled as migration gone 'out of control', they are to be combated. Sometimes the two categories come from the same reservoir of potential immigrants who switch between the two possibilities for entry: asylum or illegality, depending on respective opportunities offered. As Castles (2004: 211) has noted: 'Since

weak economy and weak states generally go together, people move both to escape impoverishment and human rights abuse. Such multiple motivations lead to a migration-asylum nexus'. In 1999, the Czech government passed a law that abolished the opportunity to convert tourist permits, often overstayed, into work and residence permits, thus leaving this possibility open to asylum seekers only. As a consequence, the number of asylum seekers increased enormously, and a subsequent law came to limit access to asylum. Restrictions move from one position to another like pieces on a chessboard, always endeavouring to checkmate unwanted immigration.

To facilitate the identification and potential deportation of illegal immigrants, temporary detention centres were introduced in the late 1990s. Over the course of time, the length of detainment in such centres was extended in a number of countries, for instance, Austria and Italy. The EU directive of June 2008, which sets a maximum term of eighteen months, was taken by Italy and Spain as an opportunity to lengthen detention.

Several tools have been introduced to manage asylum inflows. These include quicker yet more severe scrutiny of asylum applications, the principles of safe country of origin and safe third country and burden-sharing among various regions as seen, for example, between Austria and Germany since the beginning of the 1990s. Territorial distribution and cash provision limits were adopted in the UK in 1999 through the Immigration and Asylum Act (Bommes & Geddes 2000). The criteria of safe third country and the proposal for a minimum common list of European countries to be regarded as safe was eventually embodied in EU Directive 85/2005.

The fall of the Communist regimes and EU enlargement have been particularly beneficial to the countries that once bordered the EU. By contrast, new EU border countries, such as the Czech Republic, have had to adapt to their new position, not only introducing the safe country of origin and safe third country principles (1997), but also adopting other measures of older EU member states, such as delivering visas to embassies abroad and forbidding the transformation of work permit applications into asylum applications (1999). This was all done in order to prepare for inflows of asylum seekers and other unwanted immigrants.

Starting in the early 1990s, marriages of convenience also began being combated more severely. Stricter requirements for the acquisition of rights, particularly for residence and naturalisation, were increasingly imposed on spouses, for instance, in Austria (2002), in France (1993-2003) and via the 2009 Italian Law on Public Security. Immigrant families, elderly parents, adolescent children and uneducated spouses are considered a potential burden for social security as well as a hindrance to integration, and consequently treated as unwelcome categories.

In order to curtail unwanted inflows, restrictions on one right can be transferred to another right that has been identified as a more efficient

‘gatekeeper’. In Austria, for instance, ‘tightening conditions for the acquisition of citizenship can also be seen as an attempt to control inflows in the framework of the relatively liberal provisions for family reunification’ (Kraler & Stepien 2008). Family reunification was also restricted by direct measures. In Switzerland and Germany, the maximum age for reunification of children was lowered to twelve and fourteen years, respectively – this in order to avoid the difficulties of integrating adolescents into the educational system. If already over the maximum age threshold, minors are tested before being admitted. The EU directive on family reunion (2003/86/EC), the result of a long process of negotiation and bargaining, ultimately provided enough leeway to member states to manage reunification on their own terms. The European Parliament’s appeal to the Court of Justice against the directive that allowed restrictions for minor children was eventually rejected in June 2006.

All the aspects that we have discussed so far relate to immigration as admission to, and legal residence in, the territory of a country. But there is another set of measures that concerns both immigration and integration policies, and links the two together. An important common policy trend in European countries consists of combining immigration and integration policies. This serves the purpose of maximising positive economic impact while minimising the negative economic and cultural impacts of immigration. In these measures, policymakers may alternatively reinforce selection at the territorial borders in order to prevent anticipated integration problems later on, or selectively tighten the borders of social rights and naturalisation to prevent allegedly non-integrated immigrants from settling. Territorial borders and rights borders are becoming interchangeable. The preceding pages have shown us examples of both, such as the differential policies of the UK towards citizens of 2004’s ten new accession states and the Romanians and Bulgarians a few years later, and the revisions of *Aussiedler* policies in Germany from the beginning of the 1990s onwards, which placed restrictions on entry and rights. We will come back to the growing interconnectedness of immigration and integration policies in the next section.

7.5 *Assimilationism back in fashion*

One of the top priorities on the migration policy agenda is preventing cultural integration failures – this even taking priority over economic utility in the past. Events and factors have pushed cultural integration to the top of the agenda in many European countries. A revitalisation of Islamic identity, rising conflicts between this immigrant minority and traditional national minorities (Jews, in particular) and riots between nationals and minorities of immigrant origin have motivated³⁹ first, in 2004, France’s banning of the Islamic headscarf from public buildings and then, in 2010, an

unqualified prohibition of wearing the burqa anywhere. The terrorist attacks in the US, Spain and the UK and the assassination of public figures in the Netherlands have spread fear of hosting dangerous enemies within national and European borders. The Second Gulf War and the worsening of the Palestinian crisis have appeared to reinforce this cultural divide. As Vasta (2007b: 713-714) summarises:

Over the past few years there has been a widespread 'moral panic' about immigration and ethnic diversity. Populist politicians and some sections of media have portrayed immigrants as a threat to security, social cohesion and the welfare system[...] In response mainstream political parties and governments have been moving away from the multicultural policies introduced in some countries in the 1970s [...] New policies [...] often seem like a return to old style of assimilation, albeit under a more acceptable label.

Incorporation policies are returning to the assimilationist recipe that was adopted in many immigration countries, with its implicit expectation that the language and customs of countries of origin be given up. Considered typical of the French Republican style and once viewed as inadequate by many scholars and policymakers, this approach it is now coming back into political fashion in different forms.

In fact, the response to the moral panic about diversity can be summarily identified as a quest for *Leitkultur*, the notion that a leading national culture should be shared, which implies a return to assimilation-oriented strategies. To adhere to the cultural traditions and public values of the receiving country, to be part of the society and to learn the language are considered necessary elements of integration. The formula was proposed in the Süßmuth Commission's 2001 report to the Bundestag. But Germany had introduced the linguistic requirement as a condition for residence permit renewal back in 1999, the first country in the EU to do so (Groenendijk 2006). The goal of achieving *Leitkultur* is currently pursued through integration tests aimed at evaluating the knowledge of immigrants about local traditions, culture, history and institutions. Passing such tests was introduced as a requirement for naturalisation by the British Nationality, Immigration and Asylum Act in 2002 and by a German reform in 2008. Such policies are reinforced by the introduction of oaths of allegiance to the country and adhesion to a set of shared public values as further requirements of becoming a citizen. Knowledge of the national language and leading elements of culture are taught through voluntary or compulsory integration courses that may be free or partially paid for by immigrants themselves (Entzinger 2004; Groenendijk 2006; Joppke 2006). At an EU level, the *Leitkultur* principle has been confirmed as a Common Basic Principle for Integration.⁴⁰ The fact that integration courses are usually not free of charge has been

criticised by pro-immigrant organisations and scholars. Compulsory education should be free and compatible with working schedules. Nonetheless, we must point out that knowing the language of the society of settlement has proved to be a crucial element in preventing immigrants' downwards mobility (Drbohlav 2007), and that immigrants themselves consider linguistic incompetence a main reason for discomfort (Pendenza 1999; Cotesta 2002). Current European integration strategies are asking immigrants to follow paths marked by the different duties they are to accomplish and targets that must be reached. In exchange, they get an increasing number of rights, or might end up losing their right to stay altogether. So-called integration pacts are signed before entering the country in order to obtain stay permits. At this stage, a first requirement often identified is acceptance of the immigration country's common values or a minimum linguistic competence. Immigrants must pledge not to become unemployed, not to depend on social assistance and not to commit any crimes. Goals include taking integration courses, demonstrating improvement in the language and showing substantial signs that they are becoming part of the social fabric. If the immigrants reach the targets, they are assigned 'points'. If they accrue enough, they reach the 'score' needed to obtain rights, such as permit renewal, permanent residence permits and citizenship. If immigrants do not reach the targets, they not only remain stuck in an early stage of integration and deprived of more desirable rights, but they can lose points. Point loss can lead to deprivation of the right to stay and to eventual expulsion. This pattern was demonstrated by integration agreements in France in 2008, in Italy in 2009 and in the UK with its 2009 nationality reform. In general, European policies are converging insofar as they require stronger proof of integration for immigrants to obtain rights. It is interesting to note that the Netherlands, whose integration policies were once considered a paragon of multiculturalism, has been the forerunner in introducing integration courses and requisite proof of integration. Part of Dutch national policy since 2002, integration courses function more and more as an element of *immigration choisie*, a managed migration strategy. As the researchers of the Dutch chapter in this volume report: 'integration policy had become clearly linked – instrumental even – to immigration policy, as it facilitated the selection of migrants and restricted new flows, particularly those of asylum seekers, family reunion and marriage migration' (Bruquetas-Callejo et al. this volume).

Carrera (2006) makes a comparable point: 'policies on admission are paradoxically converging with those of social inclusion'. He critically observes how establishment of a legal framework based on compulsory integration as a prerequisite to access

secure juridical status' risks generating counterproductive effects. Rather than providing a framework for the social inclusion of

immigrants and the prevention of discrimination, such notions are (ab-)using the device of 'integration' as a tool to put into practice a restrictive policy.

But this is precisely the aim of 'selective borders': to control and select immigration.

Borders shift, commute even, between the immigration and integration domain. They can also move outside the receiving country's territory, such as when the Netherlands introduced pre-arrival courses for some categories of candidate immigrants in 2006.⁴¹

Sometimes, *Leitkultur* and other more demanding or restrictive policies are counterbalanced by immigrant-friendly measures, as policy combination defined by Cerna and Wietholtz in this volume as the aforementioned 'balanced policies'. In the case of neo-assimilationist policies, a counterbalance is provided by public recognition and an expression of respect towards the minority groups' culture. Nevertheless, the balance is far less established and linear than the neo-assimilation attitude. In fact, in some countries, offensive expressions and hostile public demonstrations have been directed towards immigrant minorities and their religions, even at the level of national government. And more often, an even mild public recognition of Islam has been accompanied by assertion of the receiving country's religious and cultural Christian roots.

Interestingly, though, assimilationism is being submitted to partial revisions in places where it was adopted a long time ago. The negative feedback on failed integration policies has not only had an impact on so-called multicultural systems, but also on assimilation-oriented political systems such as in France, thus leading to some convergence with immigrant policies elsewhere in the EU. For example, France has introduced affirmative action measures that contrast with the 'blind to diversity' recipe typical of assimilation-oriented models. As Minister of Interior, Sarkozy promoted a minority presence in the army, the police and the media. As President of the Republic, he also endorsed affirmative action, giving a preferential track to students coming from underprivileged districts – i.e. districts housing ethnic minorities. Even earlier, French governments had established group-oriented policies with the introduction of the Conseil de Réflexion sur l'Islam en France in 1990, the Conseil Consultatif in 1994 and, finally, the elected Conseil Français du Culte Musulman in 2003. Though a clear deviation from the assimilation model, the existence of these Muslim councils in France and Belgium must be placed in a different light. They targeted a somewhat rephrased assimilation concept: that of 'promoting a European Islam', a shared European aim these days and another common trend. Germany's proposal to teach Islam in classes conducted in the German language can be classified in this set of policies.

While the French may have adapted their policies somewhat, many European countries have started imitating not only some general values of French policy lines, but also some practical translations of being ‘blind to diversity’. This is happening when integration problems are formally claimed as being connected to places and individuals, rather than to cultural and religious minority groups. In the Netherlands, 1994’s ‘Contourennota’ suggested this strategy, which later developed into the urban policy framework. Summing up, immigrant incorporation models have never been as consistent or homogeneous as scholars describe them (Zincone 2006). Although such models change over time, they do not change as dramatically as we are tempted to cite. For instance, Cerna and Wietholtz in this volume comment on so-called ‘multicultural’ Britain:

Rarely have programmes been officially labelled as designed to support particular groups. Hence, for example, the ambitious housing regeneration scheme Urban Programme from the late 1960s. Clearly aimed at ethnic minority neighbourhoods, this was conceived of as an area-based programme rather than a people-specific one.

On the other hand, many multicultural programmes are still implemented at the local level. Some caution in emphasising clear past models and present discontinuity should not prevent us from focusing in on changes and trends.

7.6 *Shifting responsibilities for policy implementation*

Offloading problems on other decision-making bodies or organisations is another common converging trend. The strategy can be defined in Pierson’s (2001) words as ‘passing the buck’. The ‘buck’ is passed top-down from national governments to local governments, from public institutions to the non-profit sector and even to the private sector. It is also passed bottom-up from national governments to the EU. In the last case, the time and compromises needed to produce what are watered-down EU directives can also yield decisions that end up embarrassing national governments. However, EU directives can be either implemented – and the connected blame thus averted from national governments – or, to some extent, disregarded. Both strategies were applied, for instance, to antidiscrimination measures in France and Italy.

The buck can be moved abroad as well. Decisions and problem management are delocalised. Whenever possible, entry policies are moved to the countries of origin; the physical burden of taking care of asylum seekers and illegal immigrants is preferably moved to the transit countries, as was the case with detention camps in Libya, though their conditions were denounced for contradicting the most basic human rights principles (Boldrini

2010). In the least unfortunate cases, refugees are detained in safe third countries, in the case of political upheavals or civil war, and safe regions in their own countries when natural or economic emergencies take place. Sometimes, presumed terrorists are abducted and interrogated in countries where human rights are scarcely respected, however illegal such a course of action may be. The trend of moving the problems abroad can thus become something more serious and disquieting than the 'remote control' of immigration described by Guiraudon (2001). US President Barack Obama's decision to close Guantanamo Bay, forbidding the use of torture and abduction in unsafe countries, was a relieving democratic turn.

Apart from moving decisions abroad or to other legally competent decision-making bodies, there is another way of handling difficult policy problems politically, namely by using different forms of 'rules production': ministerial decrees, circulars, informal instructions. These 'soft laws', which can sometimes inappropriately affect the rights of individuals, go hand in hand with the accepted discrepancy between laws and their implementation or enforcement. Adoption of these decisional tools has its pro and cons. Such tools make public decisions more flexible and adaptable, though they may also hide deviant circumventions of the law. The legal locus of policymaking becomes ubiquitous and opaque, and it is no longer clear who is responsible for what.

8 Concluding observations

In this conclusion to my conclusions, I would like to leave it to the reader to evaluate the pros and cons of the policy practices and trends discussed. Let me just highlight some contradictions implicit in these practices and trends, and, in the process, sketch possible alternative policy lines.

We cannot pretend to import only very qualified workers when we have economic structures, social services and family customs that also demand unskilled workers. If we want to avoid illegal entry and overstaying, it is necessary to open the borders to these workers as well. Some states, like Italy, have already devoted quotas of planned inflows and targeting regularisations to caregivers. We should also favour the mobility of national workers for such jobs, up until now considered unattractive; this measure is sure to become advisable in the face of the recession and high unemployment among national workers. But this implies a large investment of public funds by states and economies, such as those of Southern Europe, which are in fact constrained by tight budgets.

We cannot profess a firm belief in the capacity of free markets to match supply and demand, and then block or selectively 'plan' the international supply of labour. We need more flexible immigration policies, such as the possibility of converting tourist permits into work permits. In South

European countries, tourist visas and other kinds of generic permits actually allow entry to find an unregistered job, become an overstayer and possibly to become regularised. If we want to discontinue hypocritical treatment of unskilled worker inflows that are at the same time formally restrictive and actually tolerant of undocumented immigrants, we need to introduce or reintroduce jobseeker permits, albeit in a revised form.

We cannot make use of immigrant labour as a reserve army and then make a strict link between employment and renewal of residence permits. Tolerance of unemployment should be practiced and then balanced by tighter control of the informal economy, which hides 'unemployed' immigrant workers. An informal economy is the main magnet for illegal immigration. On the strategy to prevent immigration by opposing unregistered work, the EU is revealing a neat north-south divide: to date, Southern Europe appears more aware of black labour's consequences on illegal immigration.

We cannot expect an immediate or even preventive assimilation to national languages and public values, while simultaneously pursuing temporary and circular migration. We should instead tailor requirements for knowledge of national languages and basic elements of culture to the length of residence, and consider these requirements as 'passports' to gaining important rights such as nationality. We must allow for an exception to the language requirements at least for elderly people with low education, to exempt both them and our public administrations from useless, tiring bureaucratic procedures.

We must be aware of the rather conflicting logic underlying national citizenships and EU citizenship, in some ways dealt with by Kochenov (2010). National citizenships can be acquired by aliens only if they prove being rooted in the country, showing that they are 'stable' inhabitants – as though they were born and educated there – or if they are long-time residents. EU citizenship is granted to nationals of member states to entitle them to move freely from one state to another and thus to match labour supply and demand. We must allow immigrants to move more freely for everyone's benefit – theirs as well as the receiving countries. This means that we also must be less demanding in terms of assimilating to one country culture and language, contenting ourselves with people who accept European democratic values. Carens (2002: 111) observes that 'a person who has functioned in a society for several years without knowing its official language should be presumed to be capable also of participating in the political process without knowing that language'. I do not believe that such immigrants can be considered able to participate in the political process, even if democratic governments have long ago abandoned the principle that political rights only be given to 'capable' people, i.e. not to illiterates. With that line of reasoning, we would also have to include ignorant immigrants. By contrast, there can be valid reasons to refuse citizenship to aliens who do not know the language, since illiteracy has been successfully

defeated in European countries and we can require new citizens to have this kind of competence. But we can also presume that linguistically incompetent immigrants who have proven they are able to work and be part of the social fabric are decent people. Consequently, they should receive a specific permanent residence permit that would not entitle them to the local vote, but would allow them to move freely about the EU as well as to work under certain conditions in other EU countries.

We cannot view the descendants of nationals who emigrated abroad, or those of former nationals residing in territories that once belonged to EU countries, as members of a national ethnic group. It cannot be assumed that they share the culture, are loyal citizens of their ancestors' countries, while conversely asking immigrants to let go immediately of their loyalty to, and cultural identification with, their country of origin. We should give immigrants time to adapt to the cultural context. At the same time, we should make an effort to implement a two-way process of integration. Nationals must learn to come to terms with the idea that many immigrants are here to stay, to become part of the permanent population. National majorities must accept minorities of immigrant origin as co-citizens, not as eternal aliens. Even though the main effort to integrate is to be carried out by immigrants, nationals cannot be exempted from making some effort to understand – and accept – immigrants and the presence of new minorities. Cultural adaptation is unlikely to find a solution somewhere in the middle – national culture will obviously be predominant, but cannot pretend to be exclusive. Furthermore, we must be aware that the cultural adaptation process does not involve just two identities (receiving country and country of origin). Citizens of both countries are bearers of multiple identities, based not only on nations, but also on regions and towns, religious, linguistic and political affiliations. Local, regional, linguistic, political and religious identities compete, often successfully, with the national one. Multiculturalism is not a novelty brought about by immigration, nor is it only a specific feature of traditionally pluralist countries such as Belgium, the Netherlands, Switzerland, Spain and the UK. All countries have always been culturally plural, politically divided. Living together has always been a demanding, often unsuccessful task. Globalisation reinforces mobility and the plurality of national and regional identities (Castles 2004); the request for an absolute mono-identity and loyalty to a single nation is doomed to fail.

On the other hand, plural identity should not imply unnecessary and undeserved dual or plural nationalities. We should prevent the descendants of a single expatriate ancestor from inheriting citizenship abroad, without any proof of a persisting cultural link with their ancestor's country. We should avoid granting these 'ghost citizens' the right to vote and to send their own representatives to Parliament. If we embrace French nationality rules calling for automatic acquisition of citizenship via double *jus soli* at

birth (in which the child of a foreigner who was born in the territory becomes a citizen) and via simple *jus soli* when coming of age (in which a foreigner born in the territory is entitled to become a citizen at the age of eighteen simply by applying), we must be prepared to extend the principle to expatriates and their descendants. The second generation residing abroad would then keep the nationality only on request and after complying with some linguistic requirements, and the third generation would lose it altogether. This was one of the solutions suggested by Bauböck et al.'s (2006) 'Acquisition of Nationality in EU Member States' project, also known as NATAC.

The last and most dramatic contradiction concerns our identity. Tolerance and respect for religious diversity are listed among the common values that we ask immigrants to accept whether they want to naturalise or remain for a limited amount of time. We want them to 'learn' tolerance, but receiving countries are exhibiting very little tolerance towards them. Clear signs of contempt towards immigrants and their culture are frequently displayed by the same policymakers who claim to teach tolerance to the new minorities. If not for any reason but consistency, European politicians and opinion-makers should avoid all open expressions of intolerance towards immigrants, such as hate speeches and discriminatory proposals.

With this brief, approximate list of contradictions and suggested corrections, I intend to put a cat among the pigeons. More meditated analysis, reflections and suggestions are the job of my readers, other colleagues and, I hope, policymakers.

Notes

- 1 Although limited in their scope, there are some positive exceptions to consider: Triandafyllidou and Gonzalez (2009), Finotelli and Sciortino (2009) and Culpepper, Hall and Palier (2008).
- 2 For the sake of a well-rounded conclusion, in this chapter I also refer to country cases not in this volume and make use of other sources accordingly.
- 3 Zincone and Caponio (2006) is merely one of the various works produced by IMISCOE Cluster C9, a working group focused on the multilevel governance of immigrant and immigration policies.
- 4 See the pioneering albeit dated works of Easton (1953), Deutsch (1963) and Almond and Bingham Powell (1978).
- 5 This kind of approach has been adopted by, for instance, Jopkke (2003).
- 6 This is a new policy paradigm according to Favell (1998).
- 7 The theory of political cycle was invented by the New Political Economy School, first introduced in reference to fiscal policy, defined as a 'political business cycle'. See Nordhaus (1975), Hibbs (1977), MacRae (1977) and Tufte (1975).
- 8 Brubaker (1992), Bauböck (1994) and Favell (1998) have looked to a conceptualisation of state membership and immigration policy paradigms.

- 9 We should note that the Canadian model is also embraced by other countries not historically linked to the British Empire.
- 10 In as early as the 1980s, Islamic education given in the German language was introduced at public schools in some *Länder*, such as North-Rhine-Westphalia and Bavaria. Nevertheless, this was not considered religious education in the legal sense of the term. In the new proposal, Islamic teaching would become a legal provision in all German *Länder*.
- 11 Although Greece is not one of the countries dealt with in this volume, it provides an interesting case for comparison.
- 12 See Zincone's chapter on Italy and Bruquetas-Callejo et al. this volume.
- 13 For more information see <http://www.picum.org>.
- 14 See Kicinger and Korys this volume.
- 15 See Zincone's chapter on Italy this volume, Rozas and Rodriguez (1996), Arena, Nascimbene and Zincone (2006), Zincone and Basili (2009), Zincone (2010), Martín Pérez and Moreno Fuentes (2010).
- 16 This is illustrated in the chapters in this volume on Italy (Zincone), Germany (Borkert & Bosswick) and Poland (Kicinger & Korys).
- 17 Now in its fourteenth term in Italian Parliament, a bill submitted by a centre-right coalition MP intends to limit the acquisition of Italian citizenship by foreigners with Italian origins, adding requirements such as attending school in Italian and/or membership in Italian cultural associations, good command of the Italian language and knowledge of Italy's main constitutional principles. Moreover, the same bill calls for the loss of Italian citizenship to foreign-born persons who have remained outside Italy for two consecutive years following their Italian naturalisation.
- 18 When strongly anti-immigrant parties are not in power though are still formidable electoral competitors (e.g. Jean-Marie Le Pen in France or Italy's Northern League at the start of their electoral success), they can force other parties – even majorities in power – to take more severe measures towards immigration and immigrants' rights. They are able to reframe the issues and, to some extent, force opponents to accept their new frame.
- 19 On the failure of immigration policies, see Cornelius, Martin and Hollifield (1994) and Castles (2004).
- 20 By the early 1990s, some European countries had started to introduce the clause of safe third country. Germany, in particular, had adopted the measure to control inflows from Poland. The EU Council established the principle of safe third country with Directive 85/2005.
- 21 These include Caritas, which is Catholic; Diakonie, which is Protestant; labourers' association Arbeiterwohlfahrt. Included later on were the independent NGO umbrella organisation DPWV; the German Red Cross; and ZWST, which comprises Jewish communities.
- 22 To survey conditions and legal treatments of undocumented immigrants and stances taken by associations, unions, politicians and magistrates, see <http://www.picum.org>.
- 23 Weil (2001a) and Niessen (2008, personal communication).
- 24 Generally speaking, such a system is doomed to disadvantage the underprivileged. This feature has been considered one of the reasons for the weak Swiss welfare, since the more affluent majority can object to redistribution (Obinger, Armington, Bonoli & Bertozzi 2005).
- 25 According to the classic Rokkan thesis, modern party systems are the product of historical legacies. The political cleavages (e.g. class, religion, language) present and capable of generating organised movements when suffrage was on the rise had the opportunity to transform themselves into mass modern parties and thus shape the political scenario to come (Rokkan 1970; Flora 1999). Since Rokkan presented his

- thesis, new cleavages have reshaped many European party systems, and even though some old parties retained their names – and some of their strengths – missions and electorate compositions changed a lot.
- 26 To illustrate the evolution of the research-policy nexus, Entzinger (2008) has presented a similar 'pattern'.
- 27 The Danish position was even more independent, keeping the freedom to decide whether to accept EU decisions on a case-by-base basis.
- 28 Ley 7/1985, Orgánica de Derechos y Libertades de los Extranjeros en España (Organic Law of Rights and Freedoms of Foreigners in Spain) of 1 July 1985.
- 29 The pact was approved by the European Council on 30 October (13440/08) on 24 September 2008 in Brussels.
- 30 Fertility rates in 2008 vary: from 1.32 in Slovakia, 1.35 in Romania and Hungary, 1.42 in Italy to 2.15 in Iceland, 2.10 in Turkey and Ireland (Eurostat 2010a).
- 31 The Euro Area (EA-16) seasonally adjusted unemployment rate was 10.1 per cent in April 2010, compared with 10.0 per cent in March. It was 9.2 per cent in April 2009. The EU-27 unemployment rate was 9.7 per cent in April 2010, unchanged from March 2010, though up from 8.7 per cent in April 2009 (Eurostat 2010b).
- 32 That said, we found huge discrepancies in this matter as well. Temporary jobs were registered at 30.9 per cent in Spain, 28.4 per cent in Poland, 22.9 per cent in Portugal and 18.3 per cent in the Netherlands, but 8.0 per cent in Ireland, 5.9 per cent in the UK and 1.5 per cent in Romania (Eurostat 2008).
- 33 Recent official rates of immigrant unemployment vary a lot (Dumont & Spielvogel 2008), and they are not worrisome everywhere.
- 34 This is the general conclusion reached in a vast meta-analysis of empirical evidence and based on a large amount of research. Nonetheless, a negative impact is observed on the 'old' stock of immigrants (Longhi, Nijkamp & Poot 2008).
- 35 Comparative data on national and foreign rates of criminality should be weighted by education, sex and age of foreigners versus nationals.
- 36 Italy and Spain are examples of exceptions.
- 37 *Le Monde* 31 May 2008: 3.
- 38 The most recent Spanish mass regularisations have given rise to protests from the German and French Ministers of Interior who fear the side effects of unwanted immigrants in their own countries. No wonder the common EU immigration policy strategy proposed by France's Sarkozy presidency included a ban on such mass amnesties – with which Spain declared its reluctance to comply.
- 39 The officially declared motivation in both cases was defending gender equality and the dignity of women, a principle unfortunately disregarded up until then.
- 40 Principle Four states that 'the basic knowledge of the host society's language, history and institutions is indispensable to integration' and that 'enabling immigrants to acquire this basic knowledge is essential to successful integration'. As the Communication for a Common Agenda for Integration (COM 2005/389) has specified, introductory programmes to be implemented at the national level can include pre-departure measures, such as information packages, language and civic orientation courses in the country of origin and more tailored courses while in the host country. These introductory programmes should also take different educational backgrounds and specific social and cultural problems into account.
- 41 Presented by erstwhile Minister for Aliens Affairs and Integration Verdonk, the bill was approved by Dutch Parliament on 22 March 2005. The law introduces the idea of 'pre-arrival integration' processes or 'integration of immigrants abroad' through the Wet Inburgering in het Buitenland. This law obliges newcomers to pass an exam that proves their Dutch language skills and basic knowledge of Dutch culture and society before even entering the country. Once admitted to the Netherlands,

migrants must attend – and successfully complete – civic integration courses in order to be granted both temporary and permanent permit renewals (Bruquetas-Callejo, Garcés-Masareñas, Penninx & Scholten 2008). If integration is not considered satisfactory, the residence permit can be revoked.

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